PROCEEDINGS

MS. METCALF: Well, I think we can go ahead and get started. Thanks for coming. We're going to give this a shot today at starting on these rules. And we appreciate you coming, and we appreciate your input.

We have quite a bit of staff in the room today. I'd like to introduce them. Juanita Myers, you all know and love, our rules coordinator who's been sending you all kinds of stuff on this all along and will continue to do so. And Susan Harris who's joined us. This is her first day in the unemployment insurance division.

MR. SEXTON: Oh, no.

MS. METCALF: She's a long-time employee, has been in

the ENT division for a very long time. She's worked on legislation a lot. She knows the rules. We're thrilled she's here. She's going to be getting her feet wet helping Juanita through this rules process. So here she is day one on the job coming to a meeting like this. So welcome.

We have some of our tax folks here. Nancy Howe, Keith Black, Dale Zimmerman. At the other table Barbara Flaherty who's in charge of our legislation. Michael Steenhout is one of our researchers who worked really hard through this process as the legislature was asking for

numbers and stats, and Michael was providing them as fast as he could. Elena Perez who's program manager at our tax branch. And at this table I guess we all probably know Mary Clogston who works with the legislature. And I'm Cheryl Metcalf. And I'm the policy and training manager.

I'm going to facilitate the meeting today. And --

MS. CLOGSTON: Are you going to --

MS. METCALF: Oh, I'm going to. I haven't gotten to Milton yet.

MS. CLOGSTON: Okay.

MS. METCALF: So what I wanted to do first -- and then I'm going to introduce Milton -- is ask those of you who came to give us some input today to introduce yourselves and tell us who you represent.

MS. RADER-KONOFALSKI: My name is Wendy Rader-Konofalski. And we represent among other groups part-time faculty at community and technical colleges.

MR. SEXTON: I'm Dan Sexton, and I'm the legislative director for the Washington State Association of Plumbers, Pipe Fitters and Sprinkler Fitters.

MR. SLUNAKER: I'm Rick Slunaker. I'm the assistant director for government affairs for the Associated General Contractors.

MR. RAFFAELL: Norm Raffaell with Weyerhaeuser company. I'm the corporate unemployment manager.

MS. METCALF: Thank you.

And in front of me is Milton Vance. He's the court reporter. And any of you who's been at hearings

previously have not seen a court reporter at our meetings -- prehearing meetings. But we know that there's a lot to be said today. We think that everything's important. We want it all to be a part of the official record.

And usually what you see in these preliminary hearings is Juanita and myself up here just scrambling and writing notes as fast as we can. And then Juanita takes the best notes, and I give her my scribbles, and she puts it all together and sends it back out to you.

Today we want to make sure that everything that you have to say is part of the official record. We know that these are really complex. There's a lot to do, a lot to cover.

So Milton's here to help us out. (To reporter) And I want to ask you, with this few people in the room do you need them to identify themselves when they speak?

(Whereupon, some guidelines and suggestions were given by the reporter to facilitate a better record.)

MS. METCALF: And I saw everyone sign in. You're all signed in?

For those of you who haven't been in this building

before, there's coffee and soft drinks straight across the lobby. And next to that in the hall are the restrooms. For anyone who wishes to go out and smoke on the breaks, there's -- the rules now are you have to be 20 feet from the building to smoke. And there's an ashtray at the end

of the sidewalk which they tell me is 20 feet away. So I guess if an ashtray is there it's okay.

I was asked to tell you that if there's an emergency and we need to leave the building, to either exit by the front door or the one that's down past the restroom and meet at the corner -- the far corner of the parking lot. We're not going to have one of those today, but I'm supposed to say that. I guess it's like the pop-down on the airplane; you have to say it.

Did everybody get a parking permit? If you're parked in this lot you've got a permit? Okay.

With that, I'm going to give you just a tiny bit of background. I'm not going to talk very long. I was on vacation last week, and wonderful Juanita wrote me some notes. And I've read them three or four times and she did such a good job that I'm just going to go with them.

The legislation that was passed in June -- and it's

what we formally call Second Engrossed Senate Bill 6097 -- contains many substantive changes to the current unemployment insurance program.

We need to evaluate these changes and determine what changes need to be made to rules currently in place and what new rules need to be adopted. And here I'm going to ad lib a second. I've worked here forever. I started in the 60's, and then I left for quite some time to have some children, and I came back. And I've been back for 20 years. I've never seen anything like this. Almost all my time spent in unemployment. The rule -- when the

legislature meets, we anticipate some changes. We do them, and we go on. This time is a real revamp. I mean, we've not seen anything like this. So we're struggling here a little bit on how to implement. It's our job to implement, and then it's our job to administer.

And Juanita sent you several pages of questions. She met with some of our policy and benefits specialists and talked to them line per line through the legislation, and then she met with the tax folks and went line per line. So what she's come up with is a list of a lot of meetings and a lot of questions and how we're going to do this and what do you think about that, and she put them all into the document that she sent you, and this is what we need your help on. How are we going to figure this out and what are we going to do?

Between now and January we have a huge amount of work

to do. We have to change all our reference manuals. We

have to change the shelves that we use for our determinations, our decisions. We have to retrain our staff. So we've got a big job and a short time to do it. So anything that you can give us that will help us on our way will be greatly appreciated.

So then I would like to ask that you take a minute to look at the ground rules if you haven't already done so. I know one of you has.

If you'd like to make comments today, and we certainly hope you will, we ask that you raise your hand

and wait until you're acknowledged. And we want to hear everything that you have to say, and you'll all have the opportunity.

Juanita's going to go through the legislation section by section. And did everybody get copies from the table of anything that they might need on any of the bills?

So we're going to -- I think she's also going to go through the issues and the questions. And if you as going through this have more issues and questions we want to hear those also.

And our plan was to go through the benefits portion this morning and the tax portion this afternoon. If we don't have more folks come, we may get through it faster. And we just talked among ourselves so and decided that if somebody who's confirmed that they're coming is not here

this morning, we will reconvene at 1:00 so that if they were just planning to come for the afternoon session that we can certainly -- that we can get their input.

We're planning to be out of here by 4:00 at the very latest. And I've already told you about Milton Vance.

So does anybody have any questions?

MR. SLUNAKER: Could you give us some indication of who else has been invited and confirm that they're going to participate so we -- you know, I may anticipate someone else that has comments that I don't have to make for myself.

MS. METCALF: Sure. And Juanita can speak to that.

MS. MYERS: No. The only two -- the other two people

who confirmed are both representing labor advocates, somebody from the State Labor Council and someone from Columbia Legal Services are the other two who confirmed for today.

MR. SLUNAKER: And what about the meeting --

MS. MYERS: On the 4th? There are quite a number of people confirmed. That's probably going to be the much larger meeting.

MR. SLUNAKER: Other --

MS. MYERS: AWB --

MR. SLUNAKER: Okay, AWB, that sort of -- business representatives.

MS. MYERS: Yes.

MS. METCALF: So any other questions?

MS. MYERS: We sent the notice out to almost everybody we could think of.

MS. METCALF: About how many was that? I'm putting her on the spot. But it was like many.

MS. MYERS: Yes. In addition to the agency's normal rule-making notification list which has about 300 names on it, we sent it out to -- I sent it out to about another 30 or 40 people/groups I could think of who might be interested in the rules under discussion.

MS. METCALF: Okay. So just one more thing. Sorry. I was going to cover this, and I didn't. The reason that we have more staff here than usual is because we don't know what you're going to ask and what you want to know.

So we want to be prepared to answer questions. It's a lot easier to answer them in the room than to have to get back to you with the information. So we're hoping that we can cover everything that you have. We might not. If not, we will get back to you. But we're hoping that we can cover the majority.

Okay, go, take it.

MS. MYERS: Okay. As Cheryl said, I'm going to go through the legislation section by section and see if you have any comments, et cetera. The piece I'm going to be

working from is the one I e-mailed you, but it says,

"Issues for Potential Rule Making" for this piece of legislation. And as Cheryl said, those are the questions that we came up with that may need clarification by rule. We may not necessarily do all of these -- end up doing them all in rule, but these are just the questions that occurred to us as we were reviewing the legislation.

And also you have a piece that's stapled and up in one corner it says "Section 4," through that section -- and they're each labeled -- these are handouts to help us as we go through each section. So when we get to Section 4, that handout I'll identify what those separate documents are just for your information. Okay? And I will just reference those sections that we didn't have comments on. I'll check with you to see if there's any you had to change.

Section 1, of course, was the amendment to the preamble which struck language saying that this title

should be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum. We didn't identify any rules associated with that.

Did you have any comments or input?

MR. SEXTON: Reserve the right to comment later.

MR. SLUNAKER: I have a question. Has the agency

anticipated or can you comment on how you think that might affect the adjudication or do you think this is going to be more -- I won't say beneficial, but more likely to occur if a case makes it to an adjudicated process, you

know, a hearings officer or in the courts?

MS. MYERS: Yes. The input we've received from our attorney is that the -- this section is a preamble. It's primarily just a statement of intent. It's not a substantive piece of law.

The striking of the language in this section doesn't have a significant impact on our rule-making process -- or excuse me -- our decision-making process because we usually don't use that text to liberally construe in our decisions. And we, in fact, have no rules defining it. And we actually can't find any court cases. What they actually do is go to the substantive portions of the law. For example, the voluntary quit section or the misconduct section. So we really for this particular section don't expect a change in -- a significant change in how we make our decisions.

MR. RAFFAELL: Yeah, I agree with you. But the thing that I've seen this preamble used for was per situation in various arguments and even some court decisions have referred to it. And we've always felt that the law should be interpreted the way it reads and not have these other

little things out here saying but, but, but, you know. But I think the effect will be very minimal with all the court cases we've had. I remember it only maybe mentioned twice.

MS. MYERS: Yes, it's been mentioned a couple times. But it was never used as a defining authority by a court

decision.

Okay. Anything further on Section 1?

Section 2 I'm just going to reference briefly because it is a -- it's more of a tax question. But it's in order. And we didn't identify any rules.

This is the one that excludes stock options from the definition of wages, and we felt the statute is very clear and it didn't need any rule making.

Any comments?

MS. RADER-KONOFALSKI: Just a question. Could you -- or where are you exactly? Are you working off the --

MS. MYERS: Okay, I'm working through the legislation.

MS. RADER-KONOFALSKI: Okay. Because you said -- we just talked about the preamble, right?

MS. MYERS: Yes, we talked about the preamble. Section 2 --

MS. RADER-KONOFALSKI: What specifically was that stock option? Is that on --

MS. MYERS: Basically what it says is that wages does not include employees income.

(Whereupon, admonition was given by the reporter to speak one at a time.)

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MS. MYERS: Okay, Section 3 amends RCW 50.20.010, which is the statute we've used as the basis for many of our decisions. It's the statute that requires individuals to be -- as a condition of receiving unemployment benefits to be able to work, available for work, and actively

seeking work.

The amendment which is effective with claims filed on or after January 4th of next year says that when a labor agreement or dispatch rules apply to an individual, then their customary trade practices, which is what they have to use to look for work, has to be in accordance with the labor agreement or the dispatch rules.

We had a question about what is covered or what was intended to be covered by labor agreement. Was that limited to negotiated labor management agreements or are we -- was the legislation intended to include things like individual employment contracts which may have some reference to -- well, I'll say an example here -- noncompete clauses. So if somebody's laid off, they've signed an agreement that they won't work in that particular field for a set amount of time or if they quit,

does that -- so that would impact their work search because they -- you know, they couldn't look for that particular occupation.

MR. SEXTON: Juanita, I don't have a whole lot of thought about the noncompete clauses or something like that. But I think clearly the language is speaking to if a labor agreement or dispatch rules apply, that's the customary language that we've used around the hiring halls. I think that language is very clear in what it's speaking to. Negotiated, labor management, hiring hall, agreement system -- I think it's very clear.

MS. MYERS: Okay. And our original thought when we had looked at this section was that it was intended to apply primarily to the referral union members. But it doesn't say that. What it says is an individual who's subject to a labor agreement or dispatch rules. Well, of course, the dispatch rules would be a referral union.

Our question is: Are there other individuals covered by the labor agreements that might have some impact on their job search in the event of a layoff or a separation?

MR. SLUNAKER: The intent here was to, in fact, apply to collectively bargained agreements, and specifically those matters that the agency had entered into agreements with various labor unions to act in your stead in administering those eligibility questions. The intent was

not to do anything other than clarify the situation in those organized labor management situations.

If there is some question about, you know, your noncompete clauses, that issue was never discussed by the proposers of the change, and the intent clearly was to address collective bargaining agreements under the National Labor Relations Act. It could perhaps have been a little bit more precisely drafted, but the operative change is the last sentence of that section. Everything else is simply a parity of the earlier language to make it clear that it applies to new claims after that date.

I don't think there's any argument that it should only apply to the situation that the agency has addressed when they enter into union referral hall agreements and

the people who are subject to those collective bargaining situations.

MR. MYERS: Thank you. See, we knew we called this meeting for a reason.

MR. SLUNAKER: That's about all I have to offer. Can I leave now?

MS. MYERS: Okay. Any further comments or questions about Section 3?

Okay, Section 4, this'll take us a while.

Section 4 amends the statute regarding voluntarily leaving work. It makes significant revisions to the

statute for individuals who file their claims January 4th of next year and later.

As you were all aware, the prior statute had in some cases some fairly broad language regarding what constituted a deterioration in working conditions and so on that provided an individual good cause for leaving work. This statute enumerates ten reasons that an individual has good cause for leaving work.

It eliminates the good cause -- well, it wasn't a good cause. It eliminates the section regarding people who leave work for marital or domestic responsibilities, having the opportunity to requalify by reporting in person to the local work source office for ten weeks. That section is gone.

Those people now would be disqualified for leaving work and have to requalify under the normal process of

waiting seven weeks and earning seven times their weekly benefit amount in employment that is covered by unemployment insurance.

When we reviewed this, we had a number of questions as you will see on these handouts, that sheet, and I'm going to go through those by each section. And this is -- if you're on the legislation, it's on page 6 is where the amendments primarily begin.

The first section where it talks about the reasons

why an individual has good cause for leaving work are in Section (2)(b). The first one, of course, is the person

has left work to accept a bona fide offer of bona fide work. And that's not a change from existing statute. People can leave one job for another and have obviously good cause for leaving that first job.

The second reason, the separation was necessary because of the illness or disability of the claimant or the death illness or disability of a member of the claimant's immediate family.

There are two provisos with that. First off, the claimant has to have pursued all reasonable alternatives before leaving work such as requesting a leave of absence and notifying their employer for the reason for the absence, and then finally when they are again able to work they need to request reemployment. Obviously they don't have to do that if that would be a futile act.

MR. RAFFAELL: I was just reading that. And I don't want to be nitpicky, but down at the bottom beginning with

"and by having," the very last word is "assume," and it might be "presume" (sic). That word might be better. They're going to presume work, not assume it.

MS. MYERS: Resume? That's a statute change.

MR. RAFFAELL: I know. But I just -- at least that word sounds better.

MS. MYERS: The second condition is that the claimant has to have terminated their employment status and no longer be entitled to be reinstated in that same position or a comparable or similar position.

We did have some questions regarding this particular

clause. First off, it requires people to request a leave of absence. However, if they get a leave of absence they don't get unemployment benefits because they've got to return to -- they don't -- they haven't terminated their employment and given up their return rights.

Wendy, did you have a question?

MS. RADER-KONOFALSKI: Would you repeat that please.

MS. MYERS: Certainly. The --

MS. RADER-KONOFALSKI: It requires --

MS. MYERS: It requires individuals to request a leave of absence. However, if they get a leave -- well, if they don't request a leave of absence, that's a reason for disqualification. If they get a leave of absence, that's also a reason for disqualification because they have not terminated their employment and they are still entitled to be reinstated. I mean, that's the definition

of a leave of absence is you are gone for a specific amount of time and with the expectation that you will return to work.

So we weren't clear as to who was going to be

covered. And it looks like to us is that if it's only going to be those people whose employers don't offer a leave of absence, of course, or when the individual requests it the employer says no.

MR. SLUNAKER: The underlying premise here was to prevent a -- my phrase -- a double dip. If we're talking disabilities, leave, things like that that may currently

be covered by the Family Leave Act, federal or state, we wanted to make it clear that you had recourse under one or the other law, not both. And to the extent that you -- we -- how you sort that out, you know, that's obviously the process. But the purpose was to say that if under the example that you requested a leave and were granted one under the Family Leave Act, compensated or otherwise, you had something to come back to, that you had -- you were covered under that provision which protected the job. You really weren't unemployed; you were temporarily not working for that reason, that you would not be allowed to also collect unemployment benefits, again, because it was not something that the employer caused for that person to be off.

So the whole idea here is to say you're not going to be allowed to draw unemployment comp and then also have Family -- FMLA protection.

MS. MYERS: And that for us is part of the issue

because we are doing further research to see what the legal ramifications are. But essentially requiring people to give up their rights guaranteed under federal and state disability or discrimination law as a condition of receiving unemployment benefits.

MR. SLUNAKER: I don't think that was the intent. I actually think it was the other way around. The idea was if you're going to avail yourselves of the FMLA protections, the unemployment system shouldn't be involved. It's a separate issue.

MS. MYERS: Norm, you had a question?

MR. RAFFAELL: Just for the record, Rick, you might want to put on the record that you are very familiar with this negotiation process that took place with this bill and just what your involvement was.

MR. SLUNAKER: Yeah, I was one of the negotiators -- I mean, we've talked about this quite a bit. I'm not going to say I'm the expert, but that's -- I believe I can explain pretty clearly in that case that was the intent.

We understood, some to a greater or lesser degree, the difficulties in administering that. But the purpose was to avoid a double-dip situation where employers were being charged for those costs when, in fact, there were other statutes that were protecting that individual.

MS. MYERS: So, for example, when we have somebody

who for whatever reason, be it pregnancy or some kind of a temporary injury, when they can't do their current job and they let their employer know, and the employer says, "Well, I don't have anything else you can do," because they could do -- say, for example, their job involves lifting, but they could still do a variety of other tasks, and the employer doesn't have anything for them but granted them a leave of absence, say, for six months until their -- they had recovered or following childbirth or whatever, if the person could do other kinds of work and was willing to actively seek other kinds of work, they could get unemployment benefits if there were other types

of work out there that they could do in their labor market and they were willing to seek that type of work for the duration of their disability. This appears to us that that would no longer be permissible.

MR. SEXTON: Well, Juanita, I think you, you know, raise very good legitimate points there. And I think -- you know, I followed what Rick was saying. I think the section reads about as clear as mud, though.

And, you know, let me also say that, you know, that there might be people in the room here that might be responsible for having written sections of this bill and they might think they have a clear knowledge of what their intent was in writing those sections of the bill when

others of us were allowed nowhere near the table and nowhere near the writing of those sections, but that is not speaking to the legislative intent. And the legislators could have had a much different intent than the person who wrote those sections or think they wrote those sections. So, you know, I follow what Rick is saying, but I think that the section as you read it is still clear as mud.

MS. RADER-KONOFALSKI: I just have a question for the ESD staff, and that would be, following what Rick had said, is: Has there been -- what are the rates, would you say, of that kind of double dipping? I mean, is that a common occurrence of people are getting FMLA and unemployment? Is that a problem that needed to be fixed with this sort of change in the legislation, do you feel?

MS. MYERS: I have no opinion about the legislation itself as to whether it was necessary or not. I don't think a lot of people leave work in these types of circumstances and get both.

Generally I would think it would be very unusual for somebody to be on an FMLA leave and get unemployment benefits because that is generally because they're leaving work to care -- in many cases to care for a family member who is ill, and if they can't work because they're at home to care for a family member who is ill, then obviously

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they are not available for work which is a requirement for

receiving UI. If it's a personal illness where they have to be gone -- what is FMLA? 12 weeks? Again, we would look to see that person can't do their job. Is there another job they could do that is available in their labor market and is -- you know, that their illness or disability or whatever situation is causing them to be on Family Medical Leave, does it restrict their employment?

So it doesn't happen a lot. There are many people we give good cause to for leaving work. But we also write decisions saying that they are unavailable for work for IU purposes. When they are again available then they can get benefits, but it doesn't happen a whole lot.

MR. SLUNAKER: And really that's the issue. I acknowledge that -- and I think others would too -- that it's not a common occurrence. But the point is, how can you be granted unemployment comp benefits when you're not

really available for work, whether it's your old job or some other job, that's not the issue. The issue is if the employer is required to hold the job for you and at the same time you're granted unemployment comp benefits, that's the issue that was trying to be addressed here.

And I think -- you know, I think the intent is clear, and I'm not going to get in an argument with Dan about what people thought about, you know. The point is they

voted for this bill in its entirety.

There are other things that the bill says with respect to employers who are involved in making decisions

to separate employees and whether they are going to be charged for those costs. And in other areas it makes some rather significant changes as to what the employer's risk or liability or expense is going to be. And I think when you look at it in total the intent was to say if you're not working because -- through no fault of your own, but you were able and available you should be eligible for benefits. This is not one of those examples.

And we acknowledge that, you know, it's difficult to figure out how to write a rule, but that's kind of what this process is for.

MS. MYERS: Thank you.

MR. SEXTON: One more time. And I think the important question here is as Wendy said and I think as you said is the ramifications under the federal law and as Wendy said, is it necessary.

MS. MYERS: Thank you for the comments on that

section.

Let's move on to the next, good cause reason cited. And that is that an individual can be allowed benefits if they left work to relocate -- to basically accompany a spouse who was subject to a mandatory military transfer,

provided the transfer is outside the existing labor market and it is in Washington state or in another state that by law allows good cause for mandatory military transfers, and finally that the individual remained employed as long as was reasonable prior to quitting work.

We have been in contact -- one of our staff people is

surveying the other states to see which of them do by law allow good cause for mandatory military transfers. And we have more of them saying no than saying yes. Or some of them allow it under certain conditions and not others.

For example, we had a couple states who said they would allow unemployment benefits if the military service member was transferred back from a foreign country, but they don't if they are transferred within the United States. So it sort of those laws in some cases allow benefits to individuals who leave work, but in other cases they don't.

So is that good enough to qualify by statute because it's a partial -- it's allowance in some cases?

MR. RAFFAELL: I guess the question I have about those states when they're transferring from another country, where would they have -- base your wages?

MS. MYERS: Military wages.

MS. RAFFAELL: What about a spouse that's working with somebody that's in the military?

MS. MYERS: Many of them work for the federal government.

MS. RAFFAELL: Okay. So then you would use those wages. And then if they were international wages --

MS. MYERS: They don't qualify. If their wages were earned -- for example, if the spouse was stationed in Germany and the wages were earned for a German business or German company, obviously they're not covered on

unemployment under our law. But actually what happens is many times they work for the federal government or for the military in a civilian role while overseas, and those wages are covered employment regardless of where they're earned.

So essentially what we're going to need to do when somebody calls in and applies under these circumstances is look, 1) was it a mandatory transfer, and 2) was it a -- what does the state allow as good cause -- the state to which they transferred.

But again, we do have some states who say, "We allow it in some cases and not in others." Does that meet the definition of pursuant to statute that allows good cause?

We should point out that a very common transfer request we get is completion of service. If a service member completes their term of service and moves back to their home of record but that's not a mandatory military

transfer, that's a personal choice. So those people would no longer be covered.

Any comments/questions?

MR. SLUNAKER: Well, I think the intent would be to take as limited a definition as you could. Be mindful of the fact that the original proposal was that you eliminate the issues altogether. This was legislative compromise.

And I think, again, the approach was to clearly limit those situations where the voluntary quit to follow a spouse was under those limited circumstances.

The separate question about how you conform this with

other states, you know, my position would be pursuant to statute means they're doing whatever they're doing legally under their own law, whether it's written in the rule, in the law or their rules.

You know, I suppose others might have a different approach than that. But that would make it as easy as possible for this agency to understand what it was they were supposed to be doing and, you know, you would be able to just communicate with, you know, other ES organizations and not have to hire an attorney general to interpret each state's law.

MS. MYERS: Right. Okay, thank you.

Section 4 did not change. It remains good cause. If an individual leaves work to protect themselves or a

member of their immediate family from domestic violence or stalking. That remains the same from the prior statute.

The next one is the individual's usual hours reduced by 25 percent or more. We had a number of questions -- excuse me -- usual compensation. I skipped one. The individual's usual compensation was reduced by 25 percent or more.

We had some questions there regarding what is included in usual compensation. And in your handouts where it says "Section 4, the top piece is the existing voluntary quit rules which we need to review. But the second document which is RCW 50.04.320 is the definition in statute of "remuneration."

MR. SEXTON: Where is that?

MS. MYERS: In the second -- the handout, the next page. Turn the page. There you go. That little paragraph --

MR. SEXTON: Oh, I see.

MS. MYERS: The little paragraph that says "Wages, remuneration." That's a statutory definition of "remuneration." And it refers to all compensation paid for personal services including commissions, bonuses, and the cash value of all compensation paid in any medium other than cash.

So using that definition in mind in absence of any

other definition, we assumed or we at least at this point are assuming that usual compensation includes everything that would otherwise be included in remuneration. That could include things like employees' allowed use of company cars, stock options, bonuses. Does it include their medical benefits, retirement benefits, overtime? That's customary. Shift differential pay, whether they get free housing. Do they get free meals as part of their employment contract? And when -- and if it does include those variety of factors, how do we calculate what is a 25 percent reduction? For example, if the company takes away the company car and says, "We can't provide cars for you anymore."

MR. DOOLEY: Juanita, you guys have -- don't you guys have a ten percent in rule or in policy now?

MS. MYERS: It's a policy generally in the area of

ten to twelve percent looking at the -- at -- but that's -- we've only looked at the hourly wages.

MR. DOOLEY: Okay. Because I could tell you that the consideration that at least from the business community side, we knew that those policies were in existence, that those natural issues were out there. And the intent I think of the folks who are pushing this piece of legislation was ten percent didn't seem, you know, a reasonable -- I mean, people were getting ten percent

reductions all the time. I mean, you know, there was a whole American Airlines folks who just took a ten percent

reduction in their wages in order to keep the company open. So we were looking for a different number that would indicate a substantial reduction, you know, substantial enough that somebody would go, "Nah, I don't want to be here anymore."

What would be the difference between the ten or twelve percent that you're talking about and how you calculated that and what compensation you use or what remuneration you use there versus a 25 percent?

MS. MYERS: We general -- what we were looking at before -- the statute before simply said a substantial deterioration in their working conditions. So if their pay was cut by ten to twelve percent, we would -- in most cases we would consider that a substantial deterioration.

The question about other benefits was outside the arena of wages because it fell into the whole arena of

substantial deterioration. So, for example, if the person lost their car -- the company car or the company decided not to any longer pay medical benefits, then that -- you know, of course, we know that's a significant cost, those types of things would be separately considered as to whether they were a substantial deterioration in working conditions outside the question of whether there was a ten

percent reduction in wages themselves, which is different in many cases than compensation which can be beyond just your wages. It can be leave, a whole variety of different things.

MR. SLUNAKER: You know, the general intent and if I could say specific purpose of this -- and there's three or four of these things -- was to take the current approach that the Department uses in these matters and stick it into the statute. We felt that the important issue was that although there was some varying levels of support for the way the agency handled these three or four areas, that wasn't the issue. The issue was that they weren't firmly rooted in the statute. So the intent was to pretty much pick up what you were doing now and with a couple of changes like the one that Tom has mentioned, you know, not ten percent, but 25 percent, make that change and apply the same general principle in this respect. So -- I mean, that's the -- I think that's the intent of this. And the word "compensation" was used in really meaning to look at what you have in your policy right now, and we've generally understood that to mean money that changed

hands.

MR. SEXTON: Juanita, hasn't -- compensation's always meant the same thing. You know, no one has ever changed the definition of what "compensation" means. If someone

was to look at a bill with the word "compensation" in it this past session or two years ago or 20 years ago, they would have read that and understood what compensation means. And compensation as you described it has a broad meaning of everything you're compensated with. And so if you were to lose a company vehicle, I think that would be 100 percent loss of your company vehicle. If you were to

lose your medical benefits, I think that would be 100 percent loss of your medical benefits. If you were to lose 25 percent of your medical benefits, that would be a 25 percent loss of your compensation.

MR. DOOLEY: You know, I think one of the things that has to be calculated in here in terms of the Department's review of how they kind of examine the whole voluntary quits area is that the discretion from the Department's perspective in terms of deterioration of work site safety is gone -- or not work site safety, but working conditions has been removed. And it's become a lot more specific in the statute as to what the Department can give in terms of voluntary quits and what they can't. I mean, the discretion has been significantly limited. And that was the intent of the legislature and the people that were pushing the legislation was that we wanted the legislature

to make the decisions about what voluntary quits are allowed and which ones aren't. So the commissioner's

discretion has become much more limited than it was.

And I guess I somewhat agree with Dan. I mean, compensation is compensation. But it doesn't necessarily mean all the things the Department used to consider as a deterioration of working conditions.

And I think maybe one of the things that we're looking at here is the statutory drafters didn't take a remuneration or a wages definition that's already in law somewhere. So I mean, I think the most logical thing

would be to go to, you know, some kind of, you know, national definition of compensation to figure out what that means. Because it's not remuneration and it's not wages. So it's got to be something different. I mean, I'm not sure what that is. But I think that's where the Department would have to go. And, you know, what would the courts do if they were having to review compensation? And what if they -- they would go to the national Webster's Dictionary or something to figure out what "compensation" is. And I'm sure it's not as broad as "remuneration" and it's not as limited as "wages."

MR. RAFFAELL: To me it's pretty clear. Compensation is something that you are given. You're being compensated for doing something. And if you're getting wages, you're getting fringe benefits, you're getting all sorts of other things from an employer that have value, you have to put a

value on that. And to me this means that what's the total value of what you're getting and what's the net effect of what's being taken away? And I think that's what you're looking at.

MR. SEXTON: Well, it sounds like I agree with Norm. It sounds like. You know, what I'm saying is is that compensation has always meant the same thing. And I think it's always meant everything you were compensated for. It's always meant your benefits and your car and everything else that is compensated from your employer, your employment. So I think it's much, much broader than wages. It always has been.

MS. MYERS: Okay, thank you.

As you can see we had a couple other questions as to whether it qualified or not. For example, if an individual was hired with the understanding that they go through a training period, and at the conclusion of that training period they would receive a substantial increase in pay. Now, they don't have it yet, but it's been promised to them as part of their hiring agreement. If they don't get it, is that a reduction?

MR. DOOLEY: Well, usual compensation seems to have a longer-term connotation than that. So I would say probably not.

MS. RADER-KONOFALSKI: Just a question. How is it

currently -- how do you currently deal with that issue? I mean, is that a situation that you currently have to deal with -- somebody has a package offered to them that they don't --

MS. MYERS: Again, it could fall under the substantial deterioration in working conditions which isn't there anymore currently.

MS. RADER-KONOFALSKI: So how would you have dealt with it under previous --

MS. MYERS: Well, depending on how much the increase was. But if it was a significant amount, we would say there's a substantial deterioration in working conditions, and the person could have good cause to quit. If their terms of hire were that they were to get a raise after a

certain period of training, and that training -- excuse me -- and that raise didn't come through, then we could have looked at that as a substantial deterioration of working conditions because it's a change in the terms of the conditions of hire.

But here, you know, I want to stress what Tom Dooley said is that the substantial deterioration of working conditions is gone. So our question -- I guess where we're coming from in this is to look at and see what portion of what we've done in the past fits within the current statute and what does not.

MR. SEXTON: Well, it's either gone or it's been redefined. And it's been redefined as 25 percent. And so, you know, if someone is promised -- you know, I don't like the 25 number, but that's the number we got. That's the number that's in statute. That's the number that's there. And that was, you know, what must have been the legislative intent. If someone is promised something, and if it's exactly 25 percent, if it's exactly that much, then it's got to be a 25-percent reduction.

MR. DOOLEY: I think, Juanita, one of the things that you have to look at -- and this is from an intent perspective, the redefinition of work site -- you know, deterioration of work site is accurate. But it was also limiting in its nature. And I would not suspect and I would argue that usual compensation isn't a promise; it's a historic look. And, you know, where you have -- I mean, every company's going to have a six-month training period,

but that's not a promise. I mean, you could get fired in the first six months of that probationary period and not receive your compensation, whatever it may be. And, you know, that would not seem to me to be the limiting aspect that the legislature had on the voluntary quit piece which is what was at issue. So, I mean, I would think that it would be more of a historical accounting of what has this person earned, and all of a sudden the employer decides,

"You know what, Joe, I'm going to have to reduce you from $10 an hour to $7 an hour." And that would be, you know, a triggering activity. You know, historically they made

$10, and now they're making $7.50. And it will depend on the individual I would say. You know, that if you have a question about hourly, monthly, weekly, annually, I mean, it's going to depend on the individual what their historic compensation has been, whether they're salary, whether they're hourly. So, you know, it's going to be -- there's still going to be some discretion from the Department's perspective, but it's all within the compensation of the usual compensation. And I would argue that, you know, a probationary period or a promise of a salary increase sometime in the future is not a usual compensation. It's not something they've received and they're getting it taken away from them, which was -- in my mind, the verbiage here says, "I've usually had it, and then my employer took it away from me. And that was the cause of me voluntarily quitting my job."

MR. RAFFAELL: I don't know. I think that you could argue that the history of this is that if you sign an agreement where an employer is going to pay you if you survive the six-month period, you've established a history that here is your compensation scale. And if the employer then reneges on that and it amounts to more than 25

percent, I think you do have a legitimate argument and certainly in court to sue the employer. And I don't know how you're going to handle this, but I think there is that side to this issue. You when you hired the person told them this is what your compensation is going to be, and

you've established a history even though you haven't earned it yet, the employer has established a history with that individual that at this point this is where the compensation goes. And all of a sudden they're changing that compensation. I think there's a good argument that that is a deterioration, and it's more than 25 percent if that's what the amount is.

MS. MYERS: Okay.

MR. DOOLEY: Norm, if my employer has wage bands, and I'm not in that wage band, and I'm in that category, is that a significant deterioration? I mean, is that a cut in usual compensation if I personally don't meet whatever criteria the employer sets to be in the wage band that I'm supposed to be in? That's a promise, but it's not a promise that I'm going to be in that category if I'm not up to standards or par to do that job.

MR. RAFFAELL: I think we're all -- at least a lot of

employers do have these ranges that you could fall and determine -- and that is left up to the employer to compensate those that are performing better. And they

will then get the increases in their salary that will keep them there. Now, when you get to the maximum, the range, you've met the requirement.

I think this is different than where in my impression was that we were talking about a situation where an employer says, "If you survive six months we're going to give you a raise automatically. Here's what the amount is." Now, if it doesn't specify that, then the employer

has the flexibility. But I'm looking at, if it's a 25-percent raise and they don't give it to them and it's specified in the contract that they give it to them, regardless of performance, and they don't give -- or if he survives -- it depends on how the contract's written really.

And I agree with you that there is going to be people that don't perform. But the employer shouldn't be writing a thing that we're going to automatically pay you 25 percent if you survive. And I don't know that that will appear in very many contracts.

MR. SLUNAKER: You know, the -- we're getting into some interesting conversations, but the point is the purpose here was to talk about a reason for leaving your job, and that reason being that the employer took something away from you that you had, not that you maybe

had an aspiration for or a right to expect, but that you

had.

Now, in Norm's case, if you actually have a contract that says at the end of the probationary period you're going to get a 25-percent increase and the employer says, "Well, king's X, I'm not going to do that," that's a very specific circumstance that personally I think probably would qualify. But I don't think you're going to find very many cases where there's those kinds of contracts involved. And certainly that wouldn't be that specific.

The issue here is: What is the individual -- what

has that person become accustomed to? And if it is changed because the employer did something to reduce, then the employer is the one that caused the employee to be dissatisfied and to leave the job as opposed to, you know, "I thought I should get a raise because I thought I was doing a good job, and I thought it should have been a 25-percent raise, and I didn't get that. I only got a 20-percent raise." Or maybe "I didn't get anything, and I got 'PO'ed and left."

That's not the employer's action that caused that separation. That's the whole purpose of this and all these other changes to say -- to try to make it clear that if you lose your job or if you have these kinds of changes because of something the employer took away, then the employer should pay. If it was something that I decided I

wanted to do or I didn't get what I thought I was deserved and I left, then I'm out.

MS. MYERS: Thank you.

MR. SEXTON: I agree with Norm on this one. I think Tom is talking to, you know, a situation like a bonus or performance pay or something. And I think that's different. And Rick I think is just completely off the mark.

I think -- if I take a job -- if I accept a job and I have an understanding that my employer is going to pay me "X" amount and then at the end of my probation period I'm going to be paid 25 percent more, and I've met the expectations, and then at that time comes -- there's a

reasonable certainty that I'm going to be paid 25 percent more when that time's come and I've met the expectations, and if that doesn't happen, then that's -- that would be a customary -- that would meet all the requirements here of being a 25-percent cut in compensation.

MS. MYERS: Okay. I'm going to go ahead and move on to the next one just because time's moving.

Okay, 25 percent reduction in hours. Again, in your usual hours, again, we have some of the same questions as we had in the prior one.

For example, again, are we talking about their weekly hours, their monthly hours, their daily hours, et cetera?

Do we look at the individual hiring agreement or what is the standard in the labor market for that occupation?

For example, if the employer normally had them working longer than is standard for that occupation but they cut them to 25 percent and now it's down to what is normal for that occupation.

Getting back to your argument, the person was used to having that many hours and has had something taken away from them so they earn less, but the reality is if that's the standard number of hours for their occupation, if they quit this job because of that, their chances of finding a job with that same high number of hours is limited.

MR. DOOLEY: Juanita, what -- do you when you do the ten percent or ten to twelve percent which I'm assuming you did for both hours and for wages in your policies, do

you look at an individual on a case-by-case basis? I mean --

MS. MYERS: Generally yes.

MR. DOOLEY: Okay. So I'm looking at Joe, and he had 40 hours more often than not over a course of a period of time, and the employer cuts him to 25 hours a week because he's a weekly employee or he's an hourly employee or whatever, and you would grant benefits because of the ten percent, twelve percent reduction from 40 to 30 or 25? Is that how that would work today?

MS. METCALF: Well -- can I pop in here? We didn't

meet. I'm Cheryl Metcalf.

It depends on the individual and the agreements at hire. We have some people who are hired to work 25 hours a week, and then they are bounced up to 40 for a while, then go back down to 25. If the hire agreement's 25, then that -- we wouldn't consider that. So yeah, we do look at each one individually and what the circumstances are.

MR. DOOLEY: So I guess the question that I would have to ask is what would be any different between the ten to twelve percent and the 25 percent? I mean, wouldn't you look at the same stuff -- I mean, the same type of agreement/arrangement that you would -- and you look at one individual and say this is how they usually work, this is their usual hours, this is what they are hired to do, this is what their labor contract said?

MS. MYERS: Yes, we probably would. The only difference is, again, because it's so specific about 25

percent decrease in usual hours as opposed to the broader substantial deterioration in working conditions, we're able to look at, you know, all the factors that led to that before.

And I certainly understand that the intent was to restrict the Department's discretion in this area. But we're just, as I said, trying to get an idea of what fits

within -- what things we can consider as part of the 25-percent reduction in usual hours, what is included in that.

MR. SLUNAKER: I will go back to the comment I made

earlier. The real purpose here was to -- was to provide some specificity but to basically rely on the approach that the agency had taken over time that we -- at least as we understood it. The issue here wasn't so much the criteria or the element; it was the degree of reduction that we were talking about.

And as Tom has, you know, pointed out in asking his questions, you know, the issue here from our perspective was we wanted to have in statute a policy statement that said what we understood the situation to be and then apply that magnitude of reduction to it. And it was our understanding that these were individual cases. And while we may have disagreements about what is compensation and what isn't, we understand that there's going to be a variety of circumstances that would be different because each individual is different, but the decision is made

with respect to that individual's usual and customary situation. The key issue here is the magnitude that we're talking about here, and that's from our perspective the important element to be placed in rule making, and that is that the statutory threshold is now 25 percent and it's

usual to that individual.

The two examples were, you know, if I had a hire agreement that said I was going to work 25 hours, even though they may have bumped me up to 40 or 60, if I'm reduced back to my contracted amount, that's not -- that doesn't meet the qualifications. There's no contract.

And maybe it is customary that people work for 25 hours in that class, but the individual had the clear understanding and has a track record that the employer asked them to work 40 or 50 hours a week, and then they got cut back, we're okay with you making the decisions on those individual cases and with those individual criteria, but it's the threshold question we're talking about, that's what we wanted to have in the statute, the question of magnitude, not so much the other issues.

MS. MYERS: Okay. Thank you.

We're going to go ahead and take a 15-minute break now. And if you could be back at 10:45, we've still got a lot to cover before noon. And we'll get to tax this afternoon.

(Recess taken.)

MS. MYERS: Okay, thank you for returning so promptly. We have about an hour and 15 minutes to finish

the rest of the benefits pieces before we move on to tax, and Cheryl had suggested that I give a little more than an

hour for lunch because it'll take a while to get there and get back. So we'll probably not reconvene till about 1:30 so we can go find some place to eat.

So I'm going to try to go quickly through the remaining sections of the voluntary quit.

We left off after the reduction in hours. The next piece is the individuals where the work site changed which increased -- the cost of a material increase in distance or difficulty of travel. And then -- and after that, the

commute is greater than is customary for their job classification and labor market.

This is a change from prior statute. Previously an individual could take a job outside their normal commute distance. And if it became too much for them or for whatever reason they could have good cause for quitting work if it was outside their customary labor market area.

Under the statute as revised the work site has to have changed so that -- either moved further away or somehow they changed the condition of work so that it increased the commute. For example, somebody was on evening shift where the commute hours were far less than they are and they moved them to day shift. And if they work in Seattle, of course, the commute to Seattle during the day shift would be considerably longer than a night-shift position.

So the questions we have there are just fairly basic definitional -- what would constitute a material increase in distance, you know, difficulty of travel, what do we include in that and various -- I'm not going to go into those much unless you have specific comments as to what should be included.

Okay. Let's go on to safety violations. An individual has good cause if their work site safety deteriorated, they reported that deterioration to the employer and the employer failed to correct it within a reasonable period of time.

We weren't certain whether this included safety hazards that were a known at the time of hire, but they discovered them afterwards. Technically the job site didn't deteriorate. It was that way all along. But the individual had no way of knowing until they actually started work that there was a safety condition. Would that be included?

MR. DOOLEY: I'm shaking my head "yes" strongly. I mean, I've -- I think it was very strongly held at least by the business community that, you know, safety is of the utmost importance. And this was one of the voluntary quits that no one had a problem with. And that, you know, whether they discover it before or after if there's a deterioration or a danger and they quit as a result of

that danger, the perceived danger, and it had not been fixed by the employer, I think it was generally held by the employer community that the employer should be charged for that benefit.

MR. SLUNAKER: This is another one of those things that we thought you were already addressing in the practice of the agency, and I think it's probably the last of those three or four changes that we -- I characterize as putting into the statute from the rule.

The key element as Tom's pointed out is that if there's a problem with safety in the workplace that is reported and uncorrected, then it's okay for the employee to leave and be granted benefits. The key here is you've got to report it, and the employer has to have a chance to

correct it. If the employer doesn't respond, that's their problem, and they should be -- suffer the financial penalties if someone is granted benefits. But an individual should not be allowed to collect benefits and leave by leaving and then say later on, "Yeah, there was a safety problem there" when the employee may be the only person who is aware of it or perceives it to be a safety problem.

You know, we're not about trying to create a new situation here. We are trying to enhance the responsibility of both parties to that transaction.

MS. MYERS: Thank you.

MR. RAFFAELL: And I presume you would continue to use the person-of-normal-sensitivity standard when you're dealing with these safety incidents reporting like a broken window or something. Some people come up with some really crazy safety things that aren't really going to affect them, and I've had hearings where an area was cordoned off and they were working on redesigning this area, and because it wasn't there and repaired the individual quit. And that normally is a quit without good cause. And I think that's the key. And Rick hit it on the nose. And I think an employer not only has to have a responsibility to correct it if it is a legitimate safety thing, but they should give feedback to the employee that "Hey, here's where we're at on this," and that normally happens.

MS. MYERS: The standard we have used and that we would continue to use is the reasonably prudent person. What would a reasonable person in similar circumstances do?

MR. SLUNAKER: One last element there. And we agree with that. The clear presumption was that that reasonable person was going to be operating under the WISHA standards that apply to the workplace here in the state. We weren't about trying to insert Employment Security into making

those kinds of safety determinations. I mean, we have a whole other agency that does that.

MS. MYERS: Thank you.

MR. DOOLEY: I'm going way off course here, but back on the -- can I just jump back real quick to the wages, hours and difficulty-of-travel thing? Because there was a bullet under each one of those that I'm not sure we flushed out very well.

In terms of the -- on wages, you know, period of time piece, the hours, --

MS. MYERS: How long?

MR. DOOLEY: Yeah, how long the hours need to be reduced, and the permanent or temporary change to the difficulty-of-travel issue, have you got a resolution in your mind about that yet or should we discuss that a little bit further?

MS. MYERS: Well, we're probably going to follow the reasonably prudent person piece. For example, you know, I would think it would -- if somebody's hours are cut by 50

percent for a week and they quit but with the expectation that the following week they'd go back to full time, I would think that probably that's not an action of a reasonably prudent person. Now, if they're going to be cut for a couple months, it might be. It's going to have to be individual circumstances. But, you know, we'll have

to probably just do it by individual what is standard.

It gets a little more difficult if somebody's commute is longer. For example, let's say you work here in Olympia or you live here in Olympia, and you've always worked here in Olympia, and they say, "We need you -- we

need help in the Seattle office, and we need you to commute to Seattle for the next four months," and that causes all kinds of problems with, you know, child care, and their car's old and all kind of different problems. There's an end in sight, but is it reasonable to ask somebody to commute that far --

MR. DOOLEY: For that period of time.

MS. MYERS: -- for that period of time?

MR. DOOLEY: So you in your mind will use the reasonable person standard --

MS. MYERS: I believe so.

MR. DOOLEY: -- for each and every one of these so that -- I mean, I would say for the sake of argument that if the decreases happened over a period of time and it ends up accumulating to over 25 percent, I mean, that to me is a reasonable person's response to saying "I don't

want to be here anymore" because they've cut you from whatever to whatever, and "I'm leaving now."

The hours piece, you know, is a little more difficult because -- I mean, how do you know whether next week

you're going back to full-time work or not?

MS. MYERS: Right.

MR. DOOLEY: I mean, the employer's not telling you their schedule sometimes. So it's going to be a little more difficult for the reasonable standard. You're going to have to get into what the employer's mind-set was in terms of --

(Whereupon, proceedings got out of control and unreport-

MS. MYERS: We -- able due to overlapping of voices.)

MR. DOOLEY: -- and what the communication was. And I would say the same thing about the difficulty-of-travel piece. I mean, I accept the reasonable person's standard I guess that you guys will have to sit there and put yourself in the shoes of both the employee and the employer and say, "Was this a reasonable activity that this person chose to voluntarily leave their job?"

But I wanted to flush that out because I think each one of those have that component to it. It made me a little nervous that you all weren't comfortable yet with -- but I agree with the reasonable-person piece.

MR. MYERS: Okay.

MR. RAFFAELL: Just one comment that Tom made me think of on that is that if somebody quits, they better quit in reasonable proximity of when the event took place,

and not six months later, and then say, "Hey, six months

ago you cut my wages" or whatever it is that you would have normally in the past you've always dealt with and have disqualified them in those cases.

MS. MYERS: Yes. The current practice is if somebody -- if the work site or the working conditions change dramatically and the person continues to work for a period of time, then they've accepted those. And I don't see that that would be changing.

MR. SEXTON: Juanita?

MS. MYERS: Yes, Dan.

MR. SEXTON: Well, what's a reasonable period of time? I mean, you know, I think as long as it's a case-by-case basis and as long as, you know, it's a reasonable-person standard, then I think we can live with that.

MS. MYERS: Right. When they talk about, for example, safety violations, reasonable period of time I think would depend on what the safety violation is. If it's something that's really hazardous, then the reasonable period of time is probably a pretty darn short period of time. If it's something that, yes, it's a safety violation but it's not at risk of life or limb immediately, the employer could probably get a slightly longer period of time to correct it would be what's reasonable.

MR. SEXTON: Well, so we've got a safety hazard, and I go to my immediate supervisor and report the safety hazard, and they say, "Well, you know, in two weeks we'll have the proper safety equipment out here, and we'll handle that, and we'll take care of that in two weeks. You know, so if I wait three weeks or four weeks before I drag up, is that reasonable?

MS. MYERS: It might be, yes.

MR. SEXTON: I might agree with that.

MR. SLUNAKER: The assumption was that "reasonable" would be significantly determined by the WISHA requirements. If it's a life safety issue, reasonable is

not two weeks. If it's something else, there are -- they've got their own time frames about what's reasonable for an employer to comply. You don't need to have a citation, but certainly if a citation results, you know, there's a pretty bright line for the Department to say, you know, there was a problem here. But I don't think we need to get ES involved in rule making as to what's reasonable, you know. Look at what the WISHA requirements are, you know, document what the employee did, what the employer did or didn't do, and take each one of those cases individually.

MS. MYERS: Thank you. All right, let's move on to illegal activities.

Our assumption is that this includes both civil and criminal violations of the law. Obviously if the employer is engaged in criminal -- or the coworkers are engaged in criminal activities at the work site, we know that that's included. We also believe that because it's broad -- illegal activities is broad, we also believe that it includes civil violations of the law, which as you referenced is the OSHA or the WISHA requirements and the minimum-wage requirements, employers who don't provide the legally mandated breaks or lunches or overtime that's mandated, are they not paying them at regular intervals or we get -- unfortunately we get a lot of complaints from people whose paychecks bounce. Are they in compliance with appropriate discrimination laws or disability laws? Is there a hostile working environment due to sexual

harassment or racial discrimination, et cetera? Those we believe would be covered as illegal activities.

Any disagreement?

MR. RAFFAELL: Just to be a devil's advocate, but if it's illegal, usually a court has to determine that. A person can be acquitted because of the charges. There can be extenuating circumstances I think. So I think we've done a pretty good job in the past just describing what your parameters are in adjudicating that.

MS. MYERS: Thank you.

MR. DOOLEY: Juanita, just to clarify, this was a

request targeted more to the hostile working environment, sexual harassment and to a certain extent I'm not sure that there was an assumption of conviction, and I think you've got that noted here that it's very unlikely that the employer's ever going to admit that they had a hostile workplace and that sort of thing. But if an individual can prove -- and I don't know what the standard is -- but if they can show that they had reasonable need to quit that job because of, you know, a safety violation or sexual harassment or discrimination or whatever, then, you know, it's a little different standard than having to go out and convict an employer of those activities I think. That's my take on that.

MS. MYERS: And the second bullet that we have here is exactly what our concerns are. Generally what we tell the claimant is when they voluntarily quit work, the

burden of establishing good cause is on the claimant. In this particular situation I think it is unlikely that the employer would ever say, "Yes, I was doing something illegal, and I refuse to fix it." The chances of that happening are pretty slim. So what would we be looking for as to what a claimant could provide us to establish that they had good cause? If the provider is saying, "No, they're lying; that's not happening here," and the

claimant says, "Yes, and I warned them on 'such and such a date,'" it may simply come down to who's the more credible person determination.

MR. RAFFAELL: Normally what they're required, at least at the hearing level and I think you are too when you adjudicate, is that if -- is the prima facie level. In other words, the one party that prevails is the one that has the more persuading evidence. You present evidence, and then the other side comes back and presents a little more, then your adjudicators and the hearing judges and even the courts decide then. You don't have to prove criminal intent or anything. All you got to do at this level is hey, this is -- I weigh it, and this is where I'm going to rule because of this. And that's it.

MS. MYERS: Preponderance of evidence, yes.

MR. SLUNAKER: I think the other -- the key thing to remember is that in particularly the number of examples you've got there are other agencies that are going to be involved in determining the validity of the allegation. Labor and Industries is going to be doing wage and hour,

meal breaks and all that sort of stuff. And, you know, lots of times many of us may think that our employers are not doing something that's quite kosher. That's not the issue. The issue is, was it reported? Was it acted on? Was there some other activity? And I don't think you need

to go to court, but I don't think the intent was to have the Department making some of those kinds of subjective judgments in other areas.

MR. DOOLEY: The individual reported the activities to the employer, I would also assume that to mean if I went to the Human Rights Commission, and the employer was

notified through that means too, you'd accept that as a notification to employer, would you not?

MS. MYERS: You know, I don't know. Because my experience has been with the Human Rights Commission that they'll take three or four months sometimes before they contact the employer.

MR. DOOLEY: They'll do their due diligence and all that.

MS. MYERS: And so --

MR. DOOLEY: I'm just following on Rick's piece. Because there will be other methods by which the employee informs the employer, and it may not be directly. It may be through WISHA or, you know, some other method.

MR. RAFFAELL: Most employers, though, have a standard rule or policy that if there's something wrong you need to report it to a supervisor. And if they

circumvent that process then you get into some other areas that you're going to have to rule on.

MR. SEXTON: You know, and this might be the area

where you would circumvent the usual process. If your employer is engaged in illegal activities, you may not go about the regular reporting channels. If your immediate supervisor is conducting illegal activity in your place of employment, you may not report to that person; you may report to outside channels.

You know, I think in this section right here, this is probably different than everything else, and I think we

probably -- I think the intent here was probably for a very low standard here on what illegal activity is. And I don't think the legislature was, you know, looking at keeping anyone in any employment where they were engaged in illegal activity. I think that, you know, we err on the side of the person reporting the illegal activity.

MS. MYERS: Thank you.

MR. RAFFAELL: I think the thing that you have to be careful of when you adjudicate this, it has to go back to the person-of-normal-sensitivity standard again. Because it can't be a perception. And if it's a legitimate perception that they were doing something illegal, the basis --

MR. SEXTON: I thought they were terrorists.

MR. RAFFAELL: Yeah. But I seen cases where people had the perception that something was happening, and then does that make it good cause? Do they have information

that would make a reasonable person think that? And it doesn't necessarily. So if you get into those situations I think you have to -- you have always in the past deciphered that. So you have some flexibility.

MR. DOOLEY: But the burden, though, however, Juanita, has not changed. The claimant has the burden of proof to show good cause.

MS. MYERS: Correct. The burden of proof or weight of evidence is due to -- on the moving party. So in a voluntary quit, that's generally the claimant, and misconduct is the employer.

MR. SEXTON: Well, Juanita, you know, I don't want to beat this to death. But, you know, just as on safety, you know, there's a pretty, you know, low standard there about let's do the right thing, let's not put anyone in harm's way. I think it's the same kind of standard for illegal activity, you know, let's not put anyone in harm's way.

MS. MYERS: Okay.

MR. SLUNAKER: One last -- I don't want it to be glossed over. But the key here is that the employer is notified. I think you have to be -- we have to be careful not to get into a situation where there is some presumption that because I went and talked to somebody else that the employer knows what there is going on. If the issue is with the supervisor, all employers have

criteria or practices that are intended to address that. And if they -- if the employee feels they can't talk to the supervisor, there should be someone else. But it's important to note that the element here in a couple of these cases is that the employer be notified of the employee's concern and it be afforded an opportunity to address that. If they aren't, then it may well be that the determination is made by the claims person that, you know, it was not reasonable to expect this or it was reasonable to expect it and the employer should have done something and didn't. And your rules, whatever they look like, shouldn't minimize the importance of notifying the employer of before the employee leaves work.

MS. MYERS: Thank you.

The final reason is that person has good cause to leave work is the usual work was changed to work that violates their -- the individual's religious convictions or sincere moral beliefs.

What this -- as worded it eliminates is people who for one reason or another change their religion or change their sincere moral beliefs. But the work site hasn't changed. They would no longer have good cause for quitting. There may be ramifications for an employer who doesn't accommodate a change in religion, but that's outside the area of unemployment insurance compensation.

Again, we're -- in talking about their usual work, you'll see question marks about possibly defining religious and moral conviction. Some people want that defined. I was a little hesitant about whether we want to step into the arena of defining what's religious belief and take it on a case-by-case basis. It doesn't happen often where somebody leaves without reason.

MR. SLUNAKER: Well, the point here from our perspective is what did the employer do? You changed the work. Not what did the employee do. Did I find enlightenment and decided that what I was doing no longer fits with that code? That may very well be the case, but that's not the employer's fault. If the employer did something that caused the problem, that's where the burden should be. That's the test.

MR. DOOLEY: I fully support Rick and your

statements, Juanita, about the fact that this should be the actions of the employer changing the workplace or the work site or the work activity, and not the employee's change.

I think, you know, the continual example that was used in this particular circumstance throughout the session was, you know, "I'm working for the Boeing Commercial Airplane Group, and all of a sudden they transfer me over to the Boeing Military Defense Group, and

I've gone from making planes to making bombs, and making bombs, you know, violates my moral or religious beliefs.

If they quit for that purpose, everybody felt okay with that. But that was, you know, if the employer changing the employee's work site, what the work activity was, then that would be acceptable and good cause for voluntary quit.

MS. MYERS: Okay.

MS. RADER-KONOFALSKI: And I have a couple of questions, but I just -- again, I'm wondering does it happen a lot that people see the light and apply for unemployment benefits because they've changed their religion in a job? I mean, was that a problem that was prevalent at Boeing or anywhere else?

MR. MYERS: No.

MS. RADER-KONOFALSKI: Or was it just presumed that it might be a problem?

MR. DOOLEY: I think -- you know, if I might -- there

was a decision by the commissioner to allow religious and moral -- I mean, there was a policy internally, and it was felt that that was important to bring over into statute as one of the voluntary quits. I don't know how often it happens. I think it's rare. But it was seen as something that people that had that change -- it was a request from the Labor Council I think to keep that as a voluntary

quit. And that was accepted.

MS. MYERS: It doesn't happen a lot. And I think it happens less with changes in a religion as opposed to things like -- I don't know -- somebody works in a bar and

they join AA, and they don't want to be around alcohol anymore, and so they'll quit. So they changed as opposed to the work site changing, that type of thing, as opposed to change in -- with a religion change. I mean, it happens. But either one of those are not common reasons for leaving work.

MS. RADER-KONOFALSKI: One of the things that is really changed in this whole section -- it goes back to that relocating the spouse's employment -- which is now only for those spouses of military employees which it creates, you know, sort of a two-tiered system here which currently doesn't exist.

And I'm just wondering what -- do you have just off the tops of your heads, you know, the numbers of people presumably -- that was mostly women I would presume -- that have taken advantage of that provision of spousal, you know, movement of relocation?

MS. MYERS: I don't have numbers for you now. We can probably get you some.

MS. RADER-KONOFALSKI: Okay. That would be interesting.

And then I just have a question in general. Because there's that cutoff of the people currently, you know, and then there's people after January 4th. Let's say somebody comes in today and takes advantage of that spousal location thing, do these people as of January 4th just get cut off? Is there a grandfathering for that?

MS. MYERS: No, they're not. What the new law

applies to claims filed after January 4th. So actually if somebody files a claim in December and while they're still working or working part time and then they quit that job in February, they're still under the old statute because it goes by the -- their claim was effective prior to January 4th. So we're going to be running two sets of statutes for a period of time until all the people whose claims are effective prior to January 4th drop off the charts.

MR. RAFFAELL: I'm not so sure off the top of my head that that's a proper ruling in that case. And the reason is that it's my impression is -- and you may be right. I just haven't looked at the law from that aspect. But my impression is when did they quit? And if they filed the claim in December and then they quit after January 4th, it's the issue that determines -- that falls in there and

not when the claim is filed. The claim, all that that does is establish an eligibility based on the current

reason that they filed. Subsequent to that, if they file on January 4th or later, and then the adjudication issue pops up, I think that the new law should have an effect on it.

MR. DOOLEY: Norm, the actual statute says with respect to claims that have an effective date on or after January 4th. So if they become effective after January 4th, which wouldn't happen under adjudication --

MR. RAFFAELL: Well, it's still -- yeah, that's what

I'm saying. The claim is now -- it's reopened. It has a new effective date.

MS. MYERS: No. The claim effective date doesn't change. In previous versions of the statutory changes, for example, when they restricted the quit to follow to spouse to mandatory transfers, what, a couple years ago, they made it effective for separations after a certain date. They didn't -- it wasn't done here. This is done claims effective after a specific date. And no matter how many times you reopen your claim during that claim year, the claim effective date doesn't change.

MR. SLUNAKER: And that was intentional. These things were not intended to be remedial. They were not intended to try to go back and change the rules in the middle of somebody's game. This is for new games.

MS. MYERS: We are running short on time, so let's

talk about misconduct.

MR. SLUNAKER: At the other meeting, is Carol Logue from NFIB one of the people -- and Mark Johnson -- are they going to be at that meeting?

MS. MYERS: Carolyn Logue has confirmed.

MR. SLUNAKER: Okay. We could maybe breeze over this because this is her big area. She could probably cover that.

MS. MYERS: There is a new definition of misconduct in the statute which essentially has four elements. Willful, wanton disregard of the employer's interest; deliberate violations of standards of behavior which the

employer has -- a behavior that the employer has a right to expect; carelessness or negligence that would cause or likely cause serious bodily harm; and carelessness or negligence of such a degree or recurrence to show intentional or substantial disregard of the employer's interest.

We recognize that the statute doesn't specifically say "harm to the employer's interest." However, our attorney's advice is that prior to this last statute, the one that's being repealed now, all existing case law still said that there had to be some nexus to the employment and something either had to harm the employer or had the potential to harm the employer. So it is her opinion

there still has to be some amount of harm to the employer to qualify as misconduct.

And I'm going to get to Tom first, then I'll --

MR. DOOLEY: Respectfully disagreeing with your attorney, I think it was of substantial interest in the change to misconduct that what ended up happening was there was the court decision requiring harm to the employer. The law was then subsequently changed to require harm to the employer's business. That law is repealed and a new misconduct definition that does not require harm to the employer; it requires four, you know, substantially different levels of qualification for misconduct. It throws out old case law. Otherwise, the legislature has just, you know, gone through a useless act

which the legislature doesn't do -- too often anyway. But I would say that -- I would argue that because the law is no longer requiring harm to the employer's business that the case law prior to that is probably not all that accurate and that we will have to develop new case law on the A, B, C and D of misconduct that currently or will exist on the 4th of January, and that the legislature was so specific enough to not only define the four areas of misconduct but also to further expound on the fact that they have, you know, an A through G that they considered to be examples of misconduct that in a lot of ways don't

have harm to the employer.

MS. MYERS: Okay, thank you.

MR. RAFFAELL: I agree with Tom. I think that probably the attorney that said that probably meant to say that there are some threads that are in both sections of the law still. And the key thread that's the same is that the rule or policy that an employer violates has to be reasonable. And if it's reasonable and they violate it, then that's misconduct. You don't have to show harm or the potential for harm if the rule --

(Whereupon, proceedings got out of control and unreportable due to overlapping of voices.)

-- if it is, then they should be denied benefits.

But I do have another comment. How are you going to interpret or are you going to interpret it the same? Your use of the terminology in here "inexcusable" in several

places versus "unexcusable," and are you going to make that a synonymous situation?

MS. MYERS: I would think so.

MR. SLUNAKER: I would just to sort of bolster the comments that -- this was a specific legislative enactment intended to address both previous statutory and case-law situations. So the attorney's statement that -- the AG's statement that well there was existing case law that

applies remains true. It would apply to previous claims.

What we're talking about now is a situation where the legislature has enacted statutory law that is intended

expressly to address that situation. So we're starting new into the future. Case law may well arise in the future addressing the new statute, but the new statute is intended to be from our perspective remedial in that sense in that it is intended to change the statutory and case-law situation that had developed up until now. So we would hope that your rules and interpretations would take that into account.

MR. SEXTON: Well, I don't see how we've erased the past with any of this. And, you know, you ask what level of harm is necessary to disqualify an individual from benefits? It seems like 25 percent was a pretty standard measure we've been using on everything else. So I think that's probably a good place to start.

MR. DOOLEY: Juanita?

MS. MYERS: Yes.

MR. DOOLEY: Just, you know, one more clarification. And you may want to have your attorneys look at this a little further. But the law does reference substantial harm to the employer's ability to do business but only under violations of law by the claimant while acting within the scope of employment. So to a certain extent,

you know, we opened up misconduct definition but there were areas where we still required harm. But it's not for everything. So now there's a distinction between those things that are required to have harm and those that aren't. So I mean, I'd have your attorneys look at that

and see whether or not that would exist.

The other thing that I would do in terms of Norm's question about how do you define some of these things and, you know, lying on a job application and things like that is that I know that this particular misconduct definition was taken pretty closely out of Montana's UI laws, so you might want to check with their administrative folks and see whether they've got some answers to the questions that you are asking within the confines of misconduct.

MS. MYERS: Right. Because unfortunately sometimes we still have employers who ask questions that legally they aren't supposed to go asking. And if a claimant doesn't answer it truthfully, is he under an obligation to -- under any kind of obligation to answer truthfully a question that the employer should not have asked? So that factors into our decision-making process.

MR. SLUNAKER: And it should. You know, that's a

legitimate situation where, you know, an employee is at risk for answering an inappropriate question. But there are recourses under other protections for that situation.

This was intended -- this is one of a couple -- well, more than a couple -- but significant policy changes that the legislature enacted, and they did it on purpose. It's intended to change course from where we were to where we hope to be in the future.

That's how you -- you know, Dan, you do change the past. You go to the legislature and you get the votes, the Governor signs it, that's what this is.

MS. MYER: Okay.

I'm going to skip down to Subsection (4) which talks about gross misconduct. There are two pieces to this. One, the person has committed a criminal act in connection with their work which they have -- of which they've been convicted, or they have admitted committing. The second piece is that they have -- their conduct demonstrates a flagrant and wanton disregard of the employer's interest. And we have a couple questions on this area.

First off, the old statute said if they're convicted of a felony or gross misdemeanor they were denied or if they admitted the commission of that felony or gross misdemeanor to a competent authority. And we have defined in rule currently -- and you have the copy of the -- that rule is part of your handouts of what constitutes a competent authority.

Now, this section eliminates "competent authority."

So our question is: Who can they allege allegedly or have admitted something to to constitute an admission? If your ex-spouse calls in and says they told me they did such and such, are we talking about Department staff? If they called and said, "Yeah, I did this," is that the admission? It gets a little touchy when if it's the employer because the employer says, "Oh, yeah, I fired them for this, and they admitted doing it," and then the claimant says, "I did no such thing." So there's a question as to who -- what admissions we're going to

calculate in this -- in determining whether gross misconduct has been committed.

Norm, you had a question?

MR. RAFFAELL: It wasn't really a question. It was more of a comment in that I've always felt that we should have had a law similar to Oregon's law. And they down there will accept a signed statement by the claimant. If it's in fact finding you get that admission and an adjudicator gets them to sign or to write it out that they did it, then that should be clear evidence to the adjudication process if they did it.

Now, where they admit to an adjudicator and the adjudicator writes that down and the individual won't sign it, then you get into some gray areas. And to me, if I were the adjudicator and I had a person admit that they

did it, unless they could come back with a pretty good story why they want to recant it, I probably would deny them benefits on that admission alone and put in the record or the file that they admitted to and who they admitted to. But that normally should be a basis for your decision making.

Now, if they admit to their spouse or somebody, then it gets to credibility and it's hearsay. I think it better be firsthand statement rather than that.

MS. MYERS: So essentially you're arguing that we open it up to say admissions to the Department staff should be included?

MR. RAFFAELL: Well, yeah, your adjudicators. Those

are the people that are gathering the evidence, and that's part of their evidence.

MR. SEXTON: Well, I think I agree with Norm here. And I think what I heard Norm saying was a firsthand admittance. If it's my claim and I come in and I say I did that, I did that, then that's different than if the employer says it or someone else says it. If the employer says I admitted to it, and I say I didn't admit to it, then that's different. But if it's the person admitting, then I think you got them.

MR. DOOLEY: Hasn't the normal standard been admission to a competent authority?

MS. MYERS: Yes, it has been.

MR. DOOLEY: And are you thinking that that's changed?

MS. MYERS: Right. Because it's -- if you look down in Section 9 -- let's see -- Subsection (3), they still have a competent authority there. It's not present in this Section 6, Subsection (4). We always presumed that the legislature means what it says. So if they put it in one place and didn't put it in another, then our presumption is that they intended that there be a distinction.

MR. SEXTON: Where was that again, Juanita? Section 3?

MS. MYERS: Subsection (9) -- excuse me -- yeah, Subsection (9), sub (3). And that's the portion that says

the employer needs to notify the Department of a felony or a gross misdemeanor of which individual's been convicted or admitted to a competent authority.

MR. DOOLEY: But isn't the issue here, though, Juanita, that one's section of the definition section, right? The other is a disqualification section.

MS. MYERS: Correct.

MR. DOOLEY: So the Department's concern if they're sitting there with a person who has engaged in gross misconduct is in Section 9 and say that the employer shall

notify the Department of the felony or the gross

misdemeanor that caused the gross misconduct, and it requires admission to a competent authority before you can deny, right?

MS. MYERS: For a felony -- yes, in that area.

MR. DOOLEY: For gross misconduct. The Department's standard even though in the definition it didn't say admitted committing to a competent authority, when the Department is looking whether to disqualify or qualify an individual they had to have admitted committing to a competent authority.

MS. MYERS: Okay. So we have -- right now we have defined "competent authority" if you look on the page that says Sections 6 through 9 in your handouts. A competent authority essentially is a court, an assistant attorney general or a law judge, a regulatory agency charged by statute with maintaining professional standards. A person or body exclusive of the part of the employer. And it

says admissions to an employee of the Department are not considered admissions to a competent authority.

So are you arguing that if somebody even though they apply to us and tell us that they did this, that that's not an -- that we should still not consider that in making our determination because we're not a competent authority?

MR. DOOLEY: You seem like a competent authority.

MR. RAFFAELL: Where are you looking?

MR. DOOLEY: 6 through 9.

But that wasn't required by statute. You guys just -- when you're doing your rule --

MS. MYERS: Yeah, that's our own rule.

MR. DOOLEY: -- you admitted not being a competent authority on your own.

MS. MYERS: Yes, we did. In this area, yes, we did.

MR. DOOLEY: And there's nothing that prevents you from considering yourself a competent authority in the next rule --

MS. MYERS: No, there isn't. So you think we should be?

MR. DOOLEY: They're exclusive of the employer.

MR. SEXTON: Juanita, the definition of what a competent authority was, where did you find that?

MS. MYERS: In the handouts that follow the both rules. It's page labeled Sections 6 through 9. And it's a WAC, the second WAC on that page. It says "competent authority" in Subsection (2)(c).

But Tom's right. It's a rule.

Yes, Wendy?

MS. RADER-KONOFALSKI: It looked like you were moving to the next section, so I wanted to get a question in.

It appears that in this misconduct it includes but is

not limited to the following conduct by a claimant. Any one of those items A through G in connection with something else or singly. I mean, it's not the preponderance of evidence type deal, right?

MS. MYERS: Well, it's a preponderance of evidence, but yes, any one of those activities could trigger a

disqualification for misconduct.

MS. RADER-KONOFALSKI: Then I just have one on (f). "Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule" -- just sort of a caution on that one question. I know you've discussed time lines. If, for example, an employer were to say, you know, "Three years ago you violated the company rule by bringing your kid in when you shouldn't have brought your kid in to work" or whatever. It seems to me like it should have been -- it should have been a rule that was broken that got documented somehow so that you couldn't just say, gee, there was this rule that you broke that the person should have known about but they were never cited for or they never -- you know what I mean?

MS. MYERS: Sure.

MS. RADER-KONOFALSKI: It's just sort of in this

big --

MS. MYERS: Right. And we also always look at the --

what are the reasons that led to the discharge on this date. So obviously if they violated a rule three years ago, and the employer kept them on, that's not the reason for the discharge today. There has to be a reason for the discharge today.

Now, if they warned them three years ago and they warned them five times since then to stop bringing their child to work, and the sixth time they brought them in, the employer fired them, then yes, then that's -- you

know, that would be a violation -- I mean, would -- could disqualify them from receiving benefits, yes.

MS. RADER-KONOFALSKI: It just seems that maybe in the WAC's it needs to be something more than just the violation took place, but that it was documented in some way. So that if they did get the warning, it was a warning that could be proved that they had warning. It's in the personnel record or something to that effect. So that -- you know what I'm saying?

MS. MYERS: Uh-huh.

MS. RADER-KONOFALSKI: Because suddenly you find out you broke a rule you didn't even know you broke because somebody said you broke it, and maybe you did or you didn't, but if it doesn't get put down on paper, then how are you going to know?

MR. DOOLEY: For the vast majority of these cases

aren't the company rule -- I mean, I know when I started up, my occupation, we have a company policy, an employee policy handbook that we had to sign off on the fact that we read it and all the rules are in there about everything. I mean, don't you look at that kind of stuff too that if the rule is listed that they've actually violated the cause of the discharge? I mean, there doesn't have to be a record of it. I mean, the record that you knew or should have known is the fact that you signed off on reading your handbook.

MS. MYERS: Yes, that could be correct. The problem

is there's a lot of small employers out there who don't have handbooks who may think that they have an expectation of something but they may not have clearly explained to the claimant or to their other employees what their expectations were for them. I mean, it does happen.

MR. RAFFAELL: That's how you get into the isolated-instance area. If they don't have rules and policies and this is an isolated instance, then normally that's not misconduct. But where you've warned them and you let them know that this is what the policy is, then it would be.

Now, in reading that section 6 through 9 again, it makes it to me very clear that an admission to the adjudicator is the Department, and that would be notice that they should be allowed to rule on the gross

misconduct issue based on that.

I think it's very important that you distinguish there's two disqualifications. There's the disqualification for misconduct which has a lower -- a different standard or gross misconduct which has that other standard. In addition there's some additional findings.

MS. MYERS: Well, they can. But there's a second definition of gross misconduct, and that's one that I'm going to just talk about real quickly before I move on is one, there's a criminal act that they've been convicted of or admitted committing, whether or not to a competent authority. The second piece is or they've engaged in behavior that shows a flagrant and wanton disregard of the

employer's interest. Regular misconduct is willful and wanton disregard. Gross misconduct is flagrant and wanton and -- we're struggling now with what types of behavior cross this threshold from willful to flagrant. And that's going to be -- probably going to be a case by case. But in reality we need to give some guidelines to our adjudicators.

MR. RAFFAELL: It seems to me that it would be -- it would be a real close nexus to the act and the level of the act as well. I think those have to be hand in hand in determining gross misconduct. Where it's -- if one is

flagrantly late for work, that to me is not necessarily gross misconduct. But if they steal something, that's really pretty flagrant.

MS. MYERS: Also a criminal act.

MR. RAFFAELL: Yeah, yeah. But I think you're talking about you've got to balance that difference between what are we talking about here? Something that's gross should be -- the act should be a little more severe than the misconduct in addition to the difference in standard.

MS. MYERS: We found a definition -- not many states define this. I think there was a definition that we located out of Oregon I think that it was actually a workers' comp case, but it defined for their purposes what "flagrant disregard" was. And it was something that is so outrageous that it crosses all bounds of behavior that you

would expect from an employee, whether it's morals or whatever that would be involved. Possibly somebody -- I don't know -- drinking on the job where it's a safety -- where it could do something. It's the airline pilots who took their clothes off in the cockpit. I mean, those are -- might be constituted as what you call flagrant disregard of the employer's interest.

MR. SLUNAKER: I think the thing that I -- the point that I wanted to make was that these are issues that you

may want to invite some written responses from people who have concerns about what the changes are, you know, what

they thought the legislature was doing. Because they -- there are organizations of individuals with some very definite opinions, and some of those opinions drove what the legislature did, whether we think they're clear or not. I mean, I think it's pretty clear that the intent was if you have been informed of what these rules are, and then at some subsequent time you violate them, the threshold is reached. I think there may be some confusion as to, you know, when the triggering event occurs.

I mean, I don't believe anybody intended on the situation being that well, three years ago you violated the rule. No, that's not what the intent was. The intent was clear that maybe three years ago you were told what the rules were, and you clearly signed that you knew what they were and then subsequently violated them. You know, that's a triggering event that was intentionally covered here.

The other issue is whether or not gross misconduct is a triggering event if it is criminal or should be criminal activity as opposed to is flagrantly disregarding the employer's interest.

I guess my best example would be a situation where, you know, you have an employer who is selling food

activity -- food products that are kosher and they are advertised as kosher, and the employee is doing something that violates that provision. That's pretty clear. It's not criminal, but it's a flagrant disregard of the employer's interest. You know, you're engaging in an

activity as an employee that violates the kosher tenant. It's not criminal, but it's a flagrant disregard and should be treated as such by the Department when making those determinations.

So if that's -- those are -- you know, I mean, that's almost the extent of my knowledge and, in fact, interest in this respect. But there are others that have very definite views, and you probably should ask for some written examples as to what those folks think are examples here that you could use to guide you.

I'd be -- I guess I'd be real concerned -- going back to the opening comments that these discussions were going to be considered part of the formal record, and I think that you're going to also avail yourself of the opportunity to accept other responses as part of the formal record.

MS. MYERS: Always.

MR. SLUNAKER: You got to try to make that as clear as possible.

MS. MYERS: Before we move on to the next section,

Barbara, are you here this afternoon?

MS. FLAHERTY: I can be.

MS. MYERS: Okay. Because I didn't know whether to skip to the job search monitoring program.

Okay, we'll go on over and we'll finish up with penalties for misconduct before we go to lunch.

Section 9, penalties for misconduct. The first

section is perfectly clear to us. Somebody who commits discharge of misconduct gets a ten-week disqualification until they earn ten times their weekly benefit amount. We understand that.

The second section is where we had some questions. Subsection (2). An individual's been discharged from his or her job or work due to gross misconduct shall have all their hourly wage credits based on that employment or 680 hours of wage credits, whichever is greater, cancelled.

Certainly if they have 680 hours from their separating employer, we know all of you cancel all those. Now, we do want to point out because obviously if it's a separating employer, it's probably the last employer, a lot of those wages are going to be in what we call the lag quarter. So they're not part of the claim. So a person could still have a valid claim even if you take out all the hours from that employer which they could use after

they requalify.

The problem we get into or the questions we have are: Say you only had 200 hours from your separating/ discharging employer. So we're looking to take 480 hours from their claim. They have five base-year employers. Who do we take them away from? Do we do it proportionately? Because whatever employer that is -- say if we took all 480 hours from one employer, that gives them a relief of charges because we only charge employers for hours that are used on their claim. So if they have five employers and the hours they worked were all

different, is it a proportionate deduction? Do we select one? Do we go by who has the highest salary? What do we do to determine which 680 hours or whatever we're going to take?

MR. RAFFAELL: I think that you should be using from an accounting theory standpoint. You send out a base period notice, and you tell employers or those five employers that get the base period the total notice they get's going to equal 100 percent. And if you tell an employer that they're going to get charged with ten percent of the claim and you're removing hours, I think you should be from an accounting theory standpoint removing ten percent of those hours from that employer. And they're going to all get their share. Because you're not distinguishing anything. You're just saying you're

only going to get ten percent charged of the total that this person draws. And I think you almost need to break that down on that basis, on the same percentage basis that they're notified that they're going to be charged and their total liability on that claim is. So you need to prorate that back.

MS. MYERS: So if they worked, you know, 1,000 hours from one employer in their base year and 300 hours for the next and another 300 for another employer?

MR. RAFFAELL: If those notices indicate to the first employer that it's 1,000 that he has 40 percent of that liability, then he should be getting 40 percent of the

total hours that are removed.

MS. MYERS: Okay. So it's -- so you're talking proportionate based on --

MR. RAFFAELL: Yes.

MS. MYERS: -- their share of the base-year wages?

MR. RAFFAELL: Because that's what you're telling them when you're sending that notice out.

MR. DOOLEY: Although, if -- let's take that same example of a 1,000, 300 and 300, and the 300 was from the last employer where the gross misconduct occurred, would the first 300 come from that employer --

MR. RAFFAELL: It should.

MR. DOOLEY: -- and the rest be proportional? So --

yeah. I mean, that's the way I see it is you take the most that you can from the separating employer upon whom the gross misconduct was alleged or performed or whatever, and then proportionally for the rest of the employer base upon the same percentage that they would have been charged.

MS. MYERS: Can you do that, Elena?

MS. PEREZ: Given enough time and money you can do anything. Yeah, I can --

MS. MYERS: Elena is in charge of the benefit charging and experience rating unit.

(Whereupon, proceedings got out of control and unreportable due to overlapping of voices.)

MR. SLUNAKER: Well, I mean, that was -- and I

appreciate that -- you know, and some of this stuff is going to be very difficult. No question about it. And what my approach is, if it cranks out that $12 million wasn't enough, well, we need to know that, and we'll go back and ask for more. But, you know, as Tom has pointed out, if there are more than the 680, you go first to the person, the employer against whom the gross misconduct was perpetrated, and then whatever's left over gets attributed back because then they would not be charged --

MS. MYERS: Right. Okay.

Well, if there are no more questions about

misconduct, this is probably a good point to break for lunch.

MS. METCALF: When we come back maybe we better look at how much of an agenda we have left and see where we want to put the concentration of the time based on what input you want to give so that we can be concluded by 4:00.

MS. MYERS: So 1:30? Is that fair? Will that give you time?

LUNCH RECESS

MS. METCALF: We had planned to be through with the benefits stuff by the lunch break. And so we have now more left than we had anticipated to be finished by 4:00. I want to make sure that we get to hear everything that

you have to say and everything that you're interested in, so I just want to make sure that we're okay if we just continue on. Are we going to make it?

MR. DOOLEY: Oh, yeah.

MS. METCALF: And this is the first meeting. There will be at least one more.

MS. MYERS: Okay, Section 10 of the legislation relates to the job search monitoring program. Section 10

-- and I'm going to defer to Barbara here for any questions because she's in charge of the job search monitoring program.

But this amendment has a couple of provisions. First off, effective January 4th it requires the Department to contract with Employment Security agencies in other states to make sure that people in those states who are drawing Washington benefits are looking for work, the same as people who live in Washington are required to look for work. And it also authorizes the Department to use interactive -- what we call interactive voice technology and other electronic means to ensure that they're doing so. We have not yet decided how we're going to implement this for the what we call the interstate claimants, how we're going to have them do this. Not all states are going to contract with us. We've already received a "no" from one state. And so for those states that say "no," we have to come up with another method for getting their job search, and we haven't, as I said, decided yet what that is going to be.

MR. SEXTON: I don't know if this is a dumb question or not. But don't they have to report to Washington if they're receiving benefits here anyhow?

MS. MYERS: Yes, they do.

But all that they do when they file their weekly

claim is that -- the question is asked: Did you look for work as instructed?

And they say: Yes.

In-state residents in the past have based on a sampling been asked to come into the actual work source offices, bring their job search logs with them. And the

claims -- not the claims specialists, but the work source counselor there will review their log with them, advise them on what additional steps they need to take, and then we also do a spot check to verify that they've, in fact, made the contacts that they've indicated on their work search log.

Interstate claimants just because they're outside of state obviously aren't asked to come into our work source office. And in the past they haven't been included in the monitoring program. The statute change requires they do so, so we have to figure out a way to get their job search contacts from them, particularly in those states where -- in those states that have said that they are not interested in monitoring our claimants for us.

So we have a variety of different options, but we haven't decided yet. And so I just let you know here that

that's something that we need to clarify for interstate claimants, what they're going to need to do because again they're not going to be called into the work source

offices here. And we'll have to come up with another methodology.

The next one is a -- the next changes are clarification that to meet the job search requirements an individual has to make three employer contacts a week or three in-person activities at their local work source office.

In the past the way the statute had been written I

think may have been unintended because it said three employer contacts or an in-person activity at the work source office. So people could avoid -- not do three employer contacts by doing one activity at a work source office. Now it makes clear that it's three and three or a combination thereof. And again, that's effective with claims filed January 4th and later.

And the last section is that effective January somebody who fails to comply with the requirements for looking for work will lose all benefits for all weeks that they failed to look for work.

What happens now currently is when we call them in, we ask them to bring the last couple weeks of their job search log. What this we believe requires us to do is to bring all their logs and we'll look at all their job search since they've been claiming benefits. Is that correct, how you felt it was --

MR. DOOLEY: Yeah, I think the difference between the failure to comply as far as the discussions went within the legislative context was this is the result of, you know, kind of the internet filing and things like that where the individuals just asked, you know, "Had you searched?" And they say, "Yes." And so for every week they said yes and their log doesn't match the fact that they said yes they would be denied and had to repay those benefits that they --

MS. MYERS: And what we are looking at is certainly if they did not do a job search or an inadequate job

search for those weeks, we would look at denying them. But if they came in and they done the contacts but perhaps they didn't fill out the log correctly or -- I mean, that would be more of a technical assistance where, you know, if they did their work search log activities, but they didn't -- you know, they put down, you know, "Bob" or something as who they applied with or they don't know the name of the person they spoke to or something like that, we would give them what we call technical assistance before we go back and deny benefits for those weeks as opposed to -- I mean, just like we're going to do with the employers is do some form of technical assistance.

However, it is different if they actually did not do a job search or made one contact a week. If that's --

because that is inadequate and they're told repeatedly when they've applied for unemployment benefits what their job search requirements are.

Barbara, did you have anything to add?

MS. FLAHERTY: (Shaking negatively.)

MS. MYERS: Any questions on this section? Okay.

MR. SEXTON: Juanita?

MS. MYERS: Yes, Dan.

MR. SEXTON: I'm not finding here where it says what you were just saying and I think what Tom was saying here in Section 10. Where do you define the penalties that you're talking about?

MS. MYERS: Subsection (2), the very bottom of page

11. "... an individual who fails to comply fully with the requirements for actively seeking work ... shall lose all benefits for all weeks ...."

MR. DOOLEY: Yeah, all benefits for all weeks, yeah.

MS. MYERS: Now, those individuals who are exempted from the job search monitoring program are still exempted. Now, I know that one of those exempted was intended to be people who had left work for domestic violence or stalking, there's the incorrect citation here. It lists the wrong section. The Code Reviser has indicated they're going to have a Code Reviser's note clarifying that that was intended to be domestic violence.

Stalking the way it refers now is that people who left work for a mandatory military transfer are exempted from job search.

MR. SEXTON: Could you tell me again your interpretation of what this means? We're not talking about someone who doesn't report correctly or someone who doesn't fill in their paperwork correctly; we're talking about someone who doesn't do a job search.

MS. MYERS: Correct. We're talking about people who don't do the three required contacts or the three in-person visits per week. If they did one or if they did none, that's who we're talking about. But if they did all three and they simply need help in completing the form, but -- I mean, but there's enough information there that we could verify, we can follow up that there was a contact made, that's going to be fine, at least initially. But as

I said, we'll give them technical assistance. And usually what we do is call them back in another two weeks and take another look.

MR. SEXTON: Thanks.

MR. DOOLEY: There was essentially a differentiation, though, between those who falsify their work search logs and those who don't do the work search. This is the people who don't do the work search correctly.

MS. MYERS: Uh-huh.

MR. DOOLEY: Not technically correctly, but in actuality.

And then elsewhere isn't there a penalty for falsification?

MS. MYERS: Yes.

MR. DOOLEY: Okay.

MS. MYERS: People who deliberately misrepresent the facts or basically commit fraud to obtain their benefits, they have a different penalty. That statute has not been changed.

MR. RAFFAELL: The issue you alluded to with the domestic violence, if a person leaves because of domestic violence, generally they're moving to another area to get away from the danger. And are you saying that they don't have to do a job search?

MS. MYERS: No. I'm saying they aren't subject to the job search monitoring program.

MR. RAFFAELL: Okay. And why would we do that?

MS. MYERS: Because it's in the statute. Because I think there was recognition by the legislature that at least for a period of time they're addressing other needs, perhaps legal, as you said, housing, et cetera. They have to be available for work, but they are excluded by statute from the job search monitoring program.

MR. RAFFAELL: So nobody monitors that whatsoever.

MS. MYERS: Correct.

MR. RAFFAELL: So there's no set period of time like they can draw all their benefits out and --

MS. MYERS: Until they get to extended benefits,

correct.

MR. RAFFAELL: And technically none of them do a job search -- if they don't submit it, you would have no way of knowing.

MS. MYERS: Well -- right. They aren't subject to the job search monitoring program. We can look at -- anytime there's a question about somebody's availability, we have the right to request their job search information at any time during their claim. So if we had a question about whether they are available for work or actively seeking work, we have the right then to question them and ask them to produce them.

MR. RAFFAELL: But then theoretically you could deny them if they weren't doing the job search.

MS. MYERS: Uh-huh.

MS. RADER-KONOFALSKI: When you say "job search monitoring," is that a new term? Did we always say that?

Or is that new because of this?

MS. MYERS: No. We've had the job search monitoring training program since '99 is when we started calling people in and saying we're going to review, --

MS. RADER-KONOFALSKI: Right.

MS. MYERS: -- spot checking, and we have staff at every work source office --

MS. RADER-KONOFALSKI: Okay.

MS. MYERS: -- whose job it is to --

MS. RADER-KONOFALSKI: Kind of audit --

MS. MYERS: -- meet with people and -- and it's not

just auditing; it's some kind of technical assistance, give them a directive about expanding their work search, looking for another kind of job if it's been a long time and the labor market isn't there, their customary occupation is down. There's a variety of things that can occur there. But it is to make sure that they are providing -- that they are doing a work search and that they don't need assistance.

MS. RADER-KONOFALSKI: And one more time. Is this going to be different now or is it more or less the same; it's just -- I mean, they always had to do the three contacts per week; it's just are you going to be monitoring them more closely or is it still going to be random and all the weeks will be looked at? In other words, if you do do the random check, you're looking not for just a few weeks; you're looking at a whole week.

MS. MYERS: Correct.
MS. RADER-KONOFALSKI: But the actual keying in of

the monitoring part is more or less the same kind of procedure?
MS. MYERS: Yes. That's going to be the same. So it's going to be random sampling because we simply don't have the staff to review every person. So it's random sampling. They'll come in, but the difference is we'll ask them to bring all their job search logs and we will review their entire claim. Or sometimes particularly in small communities people will get called in two or three

times during their claim, so it's since the last time. And we take a look at those. We're adding interstate claimants to the mix.

And the other piece is they always had to do three employer contacts or one in-person activity at the work source office such as, you know, some kind of class on interviewing techniques or -- there's a variety of different classes to help. Now they have to do three employer contacts or three activities at the work source office or a combination, two employer contacts and one at the work source or something similar. Those are the changes.

MS. RADER-KONOFALSKI: So it's gone from three contacts and one in-person job search --

MS. MYERS: No. Or one. Or. It was three or one. Now it's three or three or a combination.

MR. DOOLEY: In terms of the work search monitoring -- and I'm only saying this because I cringe at the fact that you guys will have to ask people to bring their boxes of work search logs in. Is it possible that -- because one of the things that we were looking at is if somebody's had a history of it, it'll get caught in the first -- it'll get caught in some weekly period. And then could that trigger a more in-depth review? I mean, if you called somebody in and did normal work search monitoring, let's say you asked them to bring in three weeks' work and you find that in one of the weeks they didn't fill it out properly, could you then say, "All right, you violated it

now. Let's look at all the rest of them"? And so that you -- I mean, it's going to be awful hard for a person in a job service center or a work source center to, you know, flip through ten weeks worth of -- if it may not be a necessity. I guess I'm --

MS. MYERS: And we don't know. Because the way it's phrased, it's talking about all weeks, all benefits, it implied to us that we needed to look at all their weeks.

MR. DOOLEY: It could also imply -- and I'm not saying that I'm a great interpreter of the law -- but it could also -- it's all weeks that you find them to be in noncompliance. So it all depends on how much -- you know, what your work search monitoring policy is. I mean, you

could say we want at least four weeks, your last four weeks, okay, and if you find the guy two out of the four weeks didn't comply, then you could say our next step is we're going to look at all because you've now been shown to be an individual who either has not or did not comply and therefore we're going to look at more during this claim period and -- you know. I'm thinking about your time constraints and, you know, the people on the ground that are going to have to deal with that.

MS. FLAHERTY: You know, I think this decision will be informed by these hearings and also by the UI advisory committee that instructs us. So we have some members here from there as well. So -- and the legal interpretations. So we are pleased to hear your comments.

MR. SLUNAKER: It would just flow. I mean, they're not going to penalize somebody unless they document that. So I mean, we would support the idea of sort of if there's an indication, ask for more, but not have to go through the full box.

MS. MYERS: Because with the federal extensions we're on now people could bring in 50 weeks.

Okay. So any more questions on job search monitoring?

MR. SEXTON: Well, I've been reading this differently than I am right now I think. But on Subsection (b), the

first line there, "Except for those individuals with employer attachment or union referral ...," I don't see where there's any other exception anywhere disallowing that. Doesn't that hold true then? Is that still effective after January 4th?

MS. MYERS: Yes, yes. The people exempted from the job search monitoring program, the employer attachment --

(Whereupon, proceedings were momentarily interrupted. Noise outside drowned out what was being said.)

-- where their hours have been temporarily reduced or somebody in the shared-work program, referral union members.

The next one is individuals who qualify for unemployment compensation under 50.20.050 which is intended to be the domestic violence separations, and individuals in commission-approved training. Those are

the four categories that people are exempt from the job search monitoring program.

MR. DOOLEY: So both of those references are incorrect. So the (1)(b)(3) --

MS. MYERS: Yes.

MR. DOOLEY: -- and (2)(b)(5) are both military.

MS. MYERS: Yes.

MR. SLUNAKER: Is that going to be something that can

be satisfactorily addressed with the Code Reviser's note?

MS. MYERS: I think so. If not -- I don't know about a legislative fix.

MR. DOOLEY: It wouldn't be very hard.

MS. MYERS: Yeah. But the Code Reviser said they are going to add a note, and we'll go with that.

All right. Section 11, I have a handout that looks like this. It's a graph. And then in your packet of stuff there's something called -- it's labeled up here "Section 11" in your packet of handouts. And it says, "Pertaining to the establishment of maximum benefits payable amounts."

Section (1)(b) of the statute -- it's Section 11; everybody got it? -- says that when the unemployment rate -- state's unemployment rate is six and eight-tenths percent or less. There are at least four unemployment rates, and the statute doesn't specify which one we use. So this narrative piece is a description of the four different types of unemployment rates. We have the

insured unemployment rate, the total unemployed rate, the seasonally adjusted total unemployment rate, and the three month seasonally adjusted total unemployment rate. And this is -- Bob Wagner prepared this, and this is a narrative showing what types of unemployment rates there are. And the graph that you have here shows the history

of the various unemployment rates. So the first one is the -- the green on your chart which is the insured unemployment rate, we're pretty sure the legislature wasn't speaking about that because that's never been up above five percent -- a little over five percent. So when

they're saying the unemployment rate drops to that amount, that rules out the insured unemployment rate.

The other options are the total unemployment rate which is the blue line on your graph. And then the other two -- and I'm sorry, it's hard to tell colors, but one is pink and one the red -- are the seasonally adjusted unemployment rate and the three month average seasonally adjusted.

What the Department would like to use is the three month average of the seasonally adjusted total unemployment rate because it is the least volatile. The others you can see, particularly the total unemployment rate, the blue line, spikes up and down all the time.

MR. DOOLEY: I have two questions that may determine kind of where the thinking was. This is only a one-time trigger, so volatility doesn't really matter.

MS. MYERS: That is not how we're reading the

statute. The way we read the statute --

MR. DOOLEY: So anytime we go back above six and eight-tenths it's going to turn back to 30 weeks again?

MS. MYERS: Uh-huh.

MR DOOLEY: I don't think that was the intention of the legislature by any means whatsoever.

MS. MYERS: The reason we have interpreted it that way is Section 1 remains 30 weeks except as provided in (b). And in (b) they do not say "and thereafter" which is usually what the legislature says when they mean it to be from now on.

So our interpretation is that when it goes back up above 6.8, we'll be back to 30 weeks of benefits.

MR. SLUNAKER: The question is, what happens if it spikes and comes back down within a month or two? Your interpretation that new claims filed after that then will only be subject to --

MS. MYERS: The following month. And that's why we wanted to use one of these that doesn't have those types of spikes. It has -- it's a much more stable unemployment rate.

MR. DOOLEY: Do we know what the bill summary or any of the legislative history mentioned about that?

MS. MYERS: We looked. There's nothing.

MR. DOOLEY: There's nothing on 30 weeks saying it was a one time --

MS. MYERS: No. Nothing on the record.

25 MR. RAFFAELL: Did you talk to the sponsors of the

1 bill?
2 MS. MYERS: No. No, I don't believe we did.
3 MR. DOOLEY: I mean, the six eight was meant to be an
4 effective date.
5 MR. RAFFAELL: See, the intent was to put us in line
6 with the -- from a competitive standpoint with other
7 states. There's only one state now -- Massachusetts --
8 which advocates 30 weeks. And it would be illogical
9 thinking to think that it was meant to be continued that
10 that would keep us or put us in line from a competitive

standpoint.

MR. SEXTON: Well, I don't see that at all. I don't see any mention here at all about other states and what we should do in line with other states. It's --

MR. RAFFAELL: It's not in there.

MR. SEXTON: We go by what the words say and --

MR. RAFFAELL: I agree with you, but there's a lot of things that aren't said in every law that are there but they -- what we're talking about here is what was the intent, not what's written.

MR. SLUNAKER: And that's really the question. It does appear there are two questions that you need answers to. One, which rate to use; and two, was it intended to be a trigger that said as soon as you hit that level we're going to go bump back up to 30 weeks.

Now, Dan, we can go the way you're talking about and have to jump up and down, and that means today somebody's going to get 26 weeks and tomorrow somebody might get 30. That's not what we intended. It's not really clearly written. But the clear intent was to say once we hit that threshold, it triggers back up to where it's always been. And I guess the question you all need to be comfortable with is: Can you adopt a rule that interprets that? I would think you probably could. I don't think there's anything here that says you couldn't. There's nothing that requires it to be jumping back and forth as you straddle that line regardless of which of these rates you use. So then that to me is the easy question.

Then the other one is: What's the most commonly referred to unemployment rate? To tell you the truth, I don't think we really talked about which one. There was probably some general feeling that it was the -- you know, that it was the rate without the conversation about what that might be.

MS. MYERS: The three month seasonally adjusted is what we used for extended benefits.

MR. SLUNAKER: I would think you could make a strong case for that then. If you use that measure for other things you could make a strong argument that it's an appropriate measure to be used here.

MS. MYERS: Okay, any other comments/questions?

MR. RAFFAELL: I guess I -- you're using a periodical percentage. You're going to be oscillating back and forth and making changes, sending out different grace period notices to individuals. When your EMS 166 goes to employers, that's going to be changing. I guess you get into a day could make a difference whether you get 26 weeks or 30. And I clearly don't -- I'm not so sure -- and I haven't looked at this thing in detail that you have and have to defer a little of your judgement on that -- but I don't know that the law just from what I remember looking at says that that's what you're supposed to do. I think that it's ambiguous at this point. And I think that we need to adopt whatever that seems the most logical definition based on that. And I just think that you may

be creating an unnecessary problem by changing it.

MR. SLUNAKER: That really -- that was the intent. This and a couple of other measures were clearly intended to suppress the cost to the system for a period of time until the economy's health improved. And that's what we were thinking of while we were talking about this, to once we got to -- or I guess I should say it the other way around -- once the economy got into a 6.8 percent notion that people were going to need extended benefits and we were --

(Whereupon, proceedings got out of control and unreport-

able due to overlapping of voices.)

MS. MYERS: However -- I understand that.

Just a factual note: Just because we're at 6.8 percent or above doesn't mean we would be in extended benefits. So --

MR. SLUNAKER: I understand.

MS. MYERS: -- you could have a 7.5 technically and not be in extended benefits because it has to be a certain percentage higher than the previous couple of years. So --

MR. SLUNAKER: I didn't mean to refer to UBM.

MS. MYERS: Right. Okay.

Any more comments/questions on that part?

Okay, we'll move on to part-time workers.

MR. RAFFAELL: I guess when you go to page 12, Section 11 -- now I lost where I was -- (b). It says,

"With respect to claims that have an effective date on or after the first Sunday of the calendar month immediately following the month in which the commissioner finds that the state unemployment rate is six and eight-tenths percent or less," then that's where it drops to 26 weeks. And it doesn't say following the months. It's not referring to another month; it's referring to one month,

one time. And I think it's arguable there that if they wanted this continued they would have used the plural "months" that this could occur. And the way they done it is they said following the month. Once this happens, it's

gone.

MR. SLUNAKER: So you're arguing for one time?

MR. RAFFAELL: Yes. I mean, that's what that says to me.

MR. DOOLEY: I mean -- on the opposite side, I mean, if you meant it to go back up and down, you'd have set some mechanism for it to go back up. I mean, when it goes above six and eight-tenths or more, then you go back to 30 weeks. That's not what this is getting at.

MR. RAFFAELL: And they're talking about just the month that this happens. It doesn't say the months. You're talking about continuing it. And it should have said there's more than one month in there. It should have said following the months.

MR. SLUNAKER: Okay, we've beat that horse to death.

MS. MYERS: Okay, thank you for your comments.

MR. DOOLEY: Before we beat that other dead horse, have you decided what the best -- if, in fact, this isn't the way it was supposed to be what the best unemployment rate to use is?

MS. MYERS: Yes.

MR. DOOLEY: Is it the pink one?

MS. MYERS: While you were out, we talked about -- used the three months seasonally adjusted --

MR. DOOLEY: Is that what gets reported to the forecast council?

MS. MYERS: Right. That's what we use for -- I don't

know about the forecast council, but that's what we use to pay extended benefits.

MR. DOOLEY: Okay.

MS. MYERS: Okay, part-time worker. This isn't going to apply to very many people. What the statute says -- and I'm in Sections 12 and 13 -- says that individuals who have worked no more than 17 hours in any week during their base year can continue to look for part-time work while drawing unemployment benefits.

You're probably all aware that the statute -- or not the statute -- the policy currently requires that individuals look for full-time work. This allows an exemption for a small group of individuals. It's based on the people who have been drawing -- we did a comparison of how many hours. I think we worked it 13 weeks times 17 hours would be, what, 221. So we looked -- we could look at our files and see how many individuals for their entire

base year worked fewer than that in the four quarters of their base year that might potentially qualify, and it

came to less than a thousand.

MR. SLUNAKER: A thousand people?

MS. MYERS: A thousand people. So it's a small group of individuals.

However, the questions that we had are: So I am a part-time worker, and I can look for part-time work. So I get that 17-hour-a-week job. If I say, but I'm still looking for full time, can I still get partial benefits?

MR. DOOLEY: Well, they're looking for the part-time

work too. I mean, if they got a 17-hour-work-week job, they'd still qualify for partial benefits; is that correct?

MS. MYERS: Yes. So the question is: Can they continue to get it -- the partials once they get their 17-hour-a-week job?

MR. DOOLEY: Assuming they meet all the other requirements. They've got the 17-week job, they've never gone above 17 in their base year, and they claim that they're looking for part-time work, you're going to give them partial benefits.

MS. MYERS: No, no. I'm sorry, let me clarify.

They meet all those criteria: They're looking for part-time -- another part-time work, they get it. That's another 17-hour-a-week job. But then they say, "But I still really would like a full-time job." Can they get

partial benefits then?

MR. RAFFAELL: You know, first of all, if they work part time, they're going to have less base year earnings, less benefit eligibility. There's a commonality ratio there to give them incentive to go back to work.

I think where you have a problem is somebody that's working full time and has a part-time job and gets laid off from the full-time job. They're going to have full base-year wages. And for those who only want to work part time, those people in my opinion should be denied based on coming from a full-time job.

We almost had some federal legislation that would have passed, and that was in there. And we were conceding that part and then it did not pass. There was some groups in D.C. that did not like some other part of it. And in this day and age where there is more and more employers that are working people part time for various reasons, and once they get laid off, all of a sudden we're saying under our current law, "You have to look for full-time work," and in many cases they don't want full-time work. I think that we need to --

(Whereupon, proceedings got out of control and unreportable due to overlapping of voices.)

And to make them go into an area that they don't want to

go I think is wrong.

So my impression of this is that if they're -- they have base-year wages and they're working part time -- and I may have misread it -- is that they be eligible for benefits still and be available. Is that correct?

MS. MYERS: Yes. As long as in no week in their base year did they work more than 17 years.

MR. RAFFAELL: Right. And otherwise you require them to work full time.

MS. MYERS: Yes. If they worked 18 hours in any one week, they would have to look for full-time work.

MR. RAFFAELL: And the fallacy of the system the way we have it now is we deny them for that one week, and by golly, the next week they go down to file, they say, "I'm

looking for full time now." So it's so easy to encourage that disqualification. And if they really want to abuse the system, they can do it easier this way the way it is now.

The way we've made it now, the new law, I think is more apropos.

Now, having said that, I know there's a lot of people in the employer community that just think that that should not be changed. They think it's an erosion. But I think unemployment has to follow the work patterns that exist in order to really meet the needs of the people that need it.

And we look at this as a fringe benefit for our workers.

MR. DOOLEY: Looking at the way the statute reads, I'm trying to find out how you get to the conclusion that if an individual accepts a 17-hour job and they're still looking for full-time work why they should get partial benefits. Because it says under the statute in terms of the eligible individual for part-time partial benefits is someone who seeks -- is available for, seeks, applies for, and accepts only work of 17 or fewer hours a week. So if I'm seeking full-time work, why am I supposed to get additional -- I'm trying to figure out how the Department came to the conclusion of -- I mean, because this was really set up to be part time for part time. Part time unemployment for part time, you know, purely part-time workers. And that's why it's so extremely limited. If this person has a historical 17-hour job, 40 weeks in a

year, they've worked 17 hours or less, they've never worked above 17 hours, we currently deny them benefits. This was an additional benefit to those individuals to look for part-time work because they haven't been allowed to look for part-time work in the past.

MS. MYERS: Right.

MR. DOOLEY: So I don't know how the flip side ended up happening where now that I've accepted a part-time job and I'm looking for full time should I get full-time

benefits for my part-time job and I should get credited for my part-time wages.

MS. MYERS: Right. Well, that happens -- that could happen now as Norm said. Somebody comes in and they've only ever worked part time, and we tell them to be eligible you have to look for full-time work, then they can say even though they have a history of part-time employment that they're looking for full-time work. There's nothing prohibiting that claimant from saying that today. They can go out -- and if they get a part-time job and they say they're looking for full-time work, they could still qualify for partial benefits today. And I don't see anything in here saying that they couldn't -- they have always worked 17 hours, they get another part-time job, but they say, "I really need to work full time," and so certainly deducting the portion of income that they do earn, and it may be that they may not have anything left because their weekly benefit amount is probably low, I don't see anything that would say, "If

you're looking for full-time work you can't get the difference."

MR. DOOLEY: But the Department had told us during that process that the only way that someone could get partial benefits for part-time work is if the occupation in which they are employed normal and ordinary, you know,

weekly hours is part time -- I mean, if I'm a painter, and I can only work -- and I don't even know what the example was -- but they --

MS. MYERS: School bus drivers.

MR. DOOLEY: Yeah. I mean, they look specifically at

the occupation. And I'll take a retailer, for example.

If I have a 17-hour retailer, the normal weekly hours for a full-time retailer is 40 hours a week. That person will never be able to draw partial benefits because they don't get part time. That's what we were told. That's what the -- they would look at the specific circumstance by occupation, and if their occupation was historically part time in nature, then they could get partial benefits and look for full-time work because full-time work for them is part time.

MS. MYERS: There may have been some misinformation. But if somebody comes in even if they've had a historical practice of working part time, if they come in and they say they want to look for full-time work, they will be eligible for unemployment benefits, assuming they meet, you know, the 680 hours and obviously have a valid claim.

MR. RAFFAELL: It doesn't increase their benefit or anything.

MS. MYERS: No.

MR. RAFFAELL: They're still getting the same benefit

amount.

MR. DOOLEY: Well, I guess we're in another argument that the legislature, you know, just made a useless act. I mean, they've assumed that there were no part-time benefits and therefore -- and you're saying there have been.

MS. MYERS: If they worked -- no. They did add an

additional group of people. To get benefits nowadays they would say -- they would have to say, "I am looking for full-time work." This allows them to say, "I am only looking for a part-time job." We deny people who historically work part time. And they say, "I can only work part time. I have children at home" or "I've got other commitments that I can't work full time." Now currently we would deny them benefits based on the fact that they aren't available for work. This permits us to say, "If you have never worked more than 17 hours a week, you can continue to work 17 hours a week and get unemployment benefits while you do that -- while you're looking."

MR. DOOLEY: But all they had to do was claim it. And this is I think what Norm was saying, is walk in and say, "Even though I've got a history of part time and I'm probably going to accept part time, I'm looking for

full-time work," and I'd qualify.

MR. RAFFAELL: What we're not making them do is tell a little fib, so to speak. And you can also have students that all through their college have worked two or three days a week or two days and subsidize their college, and then that job gets eliminated or they get laid off, should they be eligible for unemployment? To subsidize them until they can find another job that will allow them to continue their schooling. And I don't see anything wrong with that under those conditions.

MS. MYERS: It looks like under this, it appears to

us that high school and college students could qualify if they meet the criteria "no more than 17 hours a week."

MR. SEXTON: Juanita, the first scenario you gave us was someone who worked 18 hours in one quarter, they'd be denied.

MS. MYERS: If they said they were only going to look for 18-hour-a-week job.

Once they move above the 17 hour per week, to get unemployment benefits they have to be available for and actively seeking full-time work.

MR. SEXTON: Right. See, I don't see where that is explained. If I'm a part-time worker and I'm working a 17-hour-a-week job, and it's always 17 hours a week, you know, if my employer needs me, you know, to stay late one night or something like that, is that going to disqualify

me?

MS. MYERS: Yes. Because if you look under Section 12, Subsection (2), it says, "... 'part-time worker' ... who ... earned wages in 'employment' in at least forty weeks ... and ... did not earn wages in 'employment' in more than seventeen hours per week in any weeks in the individual's base year."

MS. RADER-KONOFALSKI: With regard to the part-time faculty at community technical colleges who are in sort of the strange employment situation where they're called part time for any percentage below a full-time load and they're paid on a different salary scale altogether from the full

timers, will some time -- I mean, I'm just trying to figure out how this would work for them. If this is a change? If this is going to be more like status quo? Because I know people cull together, you know, hours at different, you know, colleges in order to try to keep -- try to keep life and limb together, whether that's going to change things or whether they're going to have to -- I mean, I --

MS. MYERS: I believe that it's going to be status quo for the part-time faculty. Although they have 15 hours in class in many cases or less -- you know, the formula for which they report their hours is higher than that because we give them credit for prep time and grading

and all of that stuff they do. So I don't think it's going to impact the part timers. If they come in and apply for benefits as they have in the past, and most of them are looking for full-time work, you know, because, you know, they're looking for a full-time teaching load, if they -- in the past I don't see any impact to them. They would still -- they would not fall under this criteria very rarely unless they only ever taught one class. But they would then go -- then have to look for full-time work, which most of them are doing.

MS. RADER-KONOFALSKI: So it's safe to say that they should continue if they're coming in and saying, "I'm looking for full-time employment"; they're not going to particularly want to flip into saying, "I'm looking for part-time employment" necessarily.

MS. MYERS: No.

MS. RADER-KONOFALSKI: Okay.

MS. MYERS: I mean, to get below 17 hours per week on a teaching load because of the way the hours are reported, that's a pretty small -- that's maybe a class per quarter. Unless you have a teacher in that situation which I believe most of your teachers are looking for more classes, not fewer.

Dan, you had a question?

MR. SEXTON: Well, what I hear you saying is that it

wouldn't affect them, and I think you just tried to

clarify that because they would meet the criteria to begin with. They're over 17 hours to begin with, which, you know, didn't really address the answer to the question about what about the 17-hour folks, you know, what about -- you know, if there's teachers or whoever else.

MS. MYERS: If they really worked 17 hours or fewer during their entire base year and they wanted to continue to look -- work that lower teaching load, then yes, they could -- assuming they could establish a valid claim, they could receive benefits. You may have some teachers who will only teach a class or two who may want to continue being a part-time teacher of some type. But -- yes. But most of the faculty that I'm familiar with are looking for full-time jobs.

MS. RADER-KONOFALSKI: Okay, that clarifies it.

MS. MYERS: Any questions before we need to move on

to tax?

MR. SLUNAKER: I just want to -- I'm concerned -- it was not our purpose to create a situation where it was, quote, legitimate to collect a paycheck and an unemployment check for the same week. What we were trying to do here was to say, "If you have a history of being a part-time worker, we are not going to disqualify you from benefits or force you to fib in order to collect the

part-time benefits." My phrase. It's not the correct phrase, but you know what I'm talking about.

MS. MYERS: Yes.

MR. SLUNAKER: "You have a history of part-time work, and you only want to look for a part-time job, you should be able to get benefits based on that part-time history as long as you're available and looking for part-time work. If you want to look for full-time work at the same time, hey, more power to you. But you're still going to get part-time benefits. You're not going to get a paycheck and an unemployment check for the same week."

That was the purpose of all this. That -- I'm a little concerned about that first point in your bullet there. My answer to that would be no.

MS. MYERS: Okay, so noted.

MR. RAFFAELL: My impression is that most of the people that are working part time and have part-time base-year wages will not be eligible for unemployment benefits because their part-time earnings when you take away your formula, 75 percent times the weekly benefit

amount, and then subtract $25, that $25 is going to take a big chunk out of it, and then subtract that from the weekly benefit amount, there's not going to be that much money left. And it's where a person goes from full-time work and is looking for part time is going to be denied.

So they're not getting benefits. And so I think we still have a status quo with the system going.

MS. MYERS: Right. Unless they were very highly paid for their part-time work.

MR. RAFFAELL: Right.

MS. MYERS: You're absolutely correct. Their weekly

benefit amount is probably so low that when they get a 17-hour-a-week job they have excess earnings anyway and wouldn't qualify for partial benefits.

MR. DOOLEY: I think one other clarification -- one, I would agree with Rick about the answer to that first bullet.

But, you know, I think there was a recognition on the legislature's part that the honest folks who work part time had issues with child care, had issues with school, had issues with other things, who specifically chose a occupational part-time work situation of less than 17 hours a week, were getting denied because they only wanted to continue to work those 17 hours a week because of all those constraints should be eligible for partial benefits.

That was -- you know, from my standpoint that was the intent. It was part time for part time. You know, you

could get part-time benefits for people looking for part-time work. And to engage in a discussion about whether this part-time person should still receive some

benefit while they got their part-time job and are looking for full time just doesn't seem to wash with me.

MS. MYERS: Okay. We need -- yes, let's take a ten-minute break, and then come back. We still have taxes to talk about.

(Recess taken.)

MS. MYERS: Okay, we're going to spend a little time -- we only have about an hour and 20 minutes to talk about

the tax rules. We hope that will be enough time. And I am going to defer to some of the experts in tax we have here on a lot of this. I am much more familiar with the benefits side of the house than the tax side.

And the first section -- most of this statute on the taxes is pretty clear. And we know what the rates are and all those things. But we did have a few questions.

If you skip up to Section 17 which starts on the bottom of page 23 of the statute if you have the same copy I do which talks about voluntary contributions. And I'm going to turn it over here to Elena Perez who as I said manages the experience rating benefit charging unit, and Elena will talk a little bit about the changes the legislature -- legislation makes.

MS. PEREZ: Another section of the law changes a number of rate classes from 20 to 40. And this section on -- Section 17 on voluntary contributions changes the

requirements for employers to participate in this program. What this change is is that it doubled the number of rate classes the tax rate had to jump. It doubled the number of rate classes the employer would have to buy down. The piece that we're looking to do some regulations on is the crosswalk between 20 rate classes and 40 rate classes. The 40 rate classes goes into effect with rate year 2005. The changes to voluntary contributions go into effect 2004. And so we're looking to write a regulation that will do what we think the intent was, was to continue to allow employers to qualify for voluntary contributions in

the same manner that they have in previous years. And instead -- because if you just look at the number of rate classes, okay, you used to have to go up six, now you have to go up 12. Well, if there's only 20 rate classes, it may be harder for employers to reach that. And so what we would like to do is write a regulation that will crosswalk that shift for that period of time.

MR. SLUNAKER: I have a question. Would it be easier if the implementation of that buy-down was delayed until '05? Could you just flip a switch then and do it that way? Or would you still --

MS. PEREZ: We'd still have the difference between 20 and 40 rate classes. We'd still have that.

MR. SLUNAKER: But you wouldn't have to figure -- I

mean, you could just --

MS. PEREZ: I mean, it would postpone that switch. It would postpone --

MR. SLUNAKER: Would you still need the crosswalk approach?

MS. PEREZ: Yes, I think we would still have to have a crosswalk approach.

But I don't think that it's anything that's particularly insurmountable to do. We just -- what we're thinking is that the legislation was intended to do the same thing with 40 rate classes as it does 20. So --

MR. DOOLEY: So the issue is -- I guess to respond to Rick -- going from 20 to 40 is going to happen between '04

and '05. You're going to have to have a situation where if I'm in rate class 3 in '04, then I move to rate 21 in a 40-rate-class system, you have to have an idea of is that really 12 classes or not. Have I gone up 12 classes or not? So what I would -- I don't think the argument is when or whether you have to crosswalk; it is whether or not -- can you explain this chart? Is this your chart?

MS. PEREZ: It's not mine, but I can explain it if you like.

MR. DOOLEY: You cannot explain it?

MS. PEREZ: No, I can.

MR. DOOLEY: Oh, okay. Because I'm sure Bob probably

did this and --

MS. PEREZ: No. Actually one of our staff in Information Technology group did.

What this does is it shows you on the left side the ratios -- the benefit ratios -- benefits to taxable wages. And then in the column 2004 it shows you the 20 rate classes and 2005 the 40 rate classes and they're aligned -- how they're lined up. And in this example, Employer A's benefit ratio qualifies for rate class 5 under 2004. Their 2005 benefit ratio qualifies them for tax rate class of 15 if you were looking at 40 rate classes. They would -- if you took 15 minus 5, they would not have gone up 12 rate classes. That would only be 10. So they wouldn't be eligible for the voluntary contribution program. However, if what we did was use the benefit ratio and applied it to the 40 rate class division lines, they would -- their 2004

rate would convert to a rate class of 3. 15 minus 3 gives you your 12 rate class jump.

MR. DOOLEY: I think that seems pretty fair.

MS. PEREZ: It seems like a reasonable --

MR. DOOLEY: (Nodding affirmatively.)

MR. SLUNAKER: That was the general idea of proportionality. I don't understand the ratio column, the -- what's the difference between the blue and the gray shading?

MS. PEREZ: I don't -- is there any difference between blue and gray?

MR. DOOLEY: It just alternates the --

MR. BJORSTAD: No, it doesn't.

(Whereupon, proceedings got out of control and unreportable due to overlapping of voices.)

The gray ones -- let's see --

MS. PEREZ: They're even numbers on the --

MR. BJORSTAD: On 2004.

MS. PEREZ: Yeah. The blue ones are the ones that are the 40 rate classes. The gray ones are using 2003 dividing lines. And I put the two of them together so that you could see where the division lines would be from -- if we used this year's rates -- this year's benefit ratios because ratios are the same every year.

MR. SLUNAKER: The gray ones are the 20 rate class. I got'cha.

MR. RAFFAELL: What would be nice, at least helpful, would be if we could get another column added that would show what the rates would be in each year -- the tax rates that would apply for those rate classes. In other words --

MR. BJORSTAD: Oh, the tax rates would apply.

MR. RAFFAELL: Yeah. But that's what I would be

interested in. And I think that's what the employers would be interested in.

(Whereupon, proceedings got out of control and unreportable due to overlapping of voices.)

If you could do that, that would be a nice little --

MR. BJORSTAD: I could do that. No, it would be in comparison to 2003.

MR. RAFFAELL: Yeah. But 2005 then, you know -- you know, what I'm interested in is if I'm going to be in rate class 5 versus 15 when you -- you go to 4 and you get watered down and spread that rate out so there's less of a drastic jump from one rate class to another. So what would be the difference in my cost based on the rate?

MR. BJORSTAD: If you look at the way this chart feeds out, the first 14 rates almost -- they almost go across. The last six rates spread out -- the last six rates under 20 spread out to almost 30, what, 25 rates. So it kind of spreads that way. It's not a straight -- we didn't go from -- it's not a one-for-one thing. When we went from 20 to 40, a lot of the first 12 rate classes

stayed in the first 12 rate classes.

MR. DOOLEY: But you would have -- the way that I think Norm is asking this, if I was in rate class 17 -- or actually let me go back. If I was in rate class 5 in the

old system, and then I moved, say, in my ratio to 26 in the new rate system, then I would be able to compare what the rates were I guess when I was back in the 40-rate-class system, you compare across to rate class 3. I know what my rate would be in rate class 3 in the 40-rate-class system for '05. Right? And I know what it would be in rate class 26 in the new system. And I knew what it would

have been in 17 in the old system. Right? So wouldn't you be able to just -- what it did is it took 17 and broke it, say, into one, two, three, four, five, six, seven, eight, almost nine categories. So those nine categories will have nine separate tax rates compared to just the one. So some people will be saving more in -- that were in 17 that are now in 21 through 29.

MR. BJORSTAD: Uh-huh.

MR. DOOLEY: Does that make sense?

MR. RAFFAELL: Yes.

I think for the purpose of what you did it for, this is really nice. But I'd like to get more from it, and that would be --

MR. DOOLEY: We can get you that in a different -- you don't have to do that; we're getting numbers run by Bob for something. But we'll get you that.

MS. RADER-KONOFALSKI: I just had a question about the change from the 20 to the 40 step rate. I just -- you

know, out of total ignorance what is the value -- what was the value for the business community to go from 20 to 40? I mean, what -- how does it change things for the better? Anybody?

MR. DOOLEY: Well, I think the biggest thing was that the old 20-rate-class system was slotted by percentage of taxable wages. So no matter what class you were in, there was five percent of the taxable wages in each one of those.

So -- since he's not here -- if the Boeing Company was in one rate class, nobody else could get in that rate class. They'd have to either be on one side or the other side. So you're forcing people to be in a rate class that doesn't necessarily reflect their experience.

Under the 40-rate-class system, you have -- everybody gets slotted wherever their benefit ratios are, regardless of how much taxable wage base is in each one. You can have empty rate classes in a 40-rate-class system. If nobody falls into that benefit ratio, they won't be in it. And you could have ten percent in rate class 2. And that's just the nature of how people fall. And so what ended up happening for the employers is that you're much more experienced based, and then the social cost factor when added to it bears your share of the costs of the rest of the system, the nonaccounted-for costs.

MR. SLUNAKER: It more closely matches your tax with your experience.

MS. RADER-KONOFALSKI: I could just do a follow-up. Are there any down sides to the 40 rate? How did it change the --

MR. SLUNAKER: It more closely matches your tax to your experience.

MS. RADER-KONOFALSKI: For ESD or for -- I mean, does it change -- does it change any of the administration of things in any significant way? Or what --

MS. PEREZ: Going from 20 to 40 rate classes?

MS. RADER-KONOFALSKI: Yeah.

MS. PEREZ: It's a fairly significant change. The tax structure changes, probably impacts every part of our automated systems. And it will require a major effort on our part to reprogram to do the 40 rate classes and some of the other changes because it affects all of the components of our tax system. So it's a very significant change.

MS. MYERS: Okay. Section 18, we're ready to move on.

One of these pieces is that it authorizes the Department to use either the Standard Industrial Classification codes, the SIC codes, or the North American Industry Classification Code System which we refer to as

NAICS. We are currently using the SIC codes. We need to move to the NAICS codes simply because that is the code that's being used by the Department of Labor. The SIC code isn't really valid any longer. But we need to determine at what point we're going to start using the NAICS code instead of the SIC code. And in some cases because that determines how an employer is classified into what, you know, category of business they fall into, that may I believe have some impacts on a few businesses' tax rates. So the decision then is just when do we start implementing NAICS. And I don't know if we have a date in mind yet, but we're going to need to figure out when we start using that.

MR. SLUNAKER: Well, I mean, that's kind of your

call. I mean, all we need to know is when you're going to do it. I mean, it's -- conform it to everything else you're changing. I wouldn't do it any differently.

MS. MYERS: Okay.

MR. DOOLEY: Are there plans to go to NAICS? ESDY? I mean, wouldn't it be the same date?

MS. MYERS: Yes.

MR. DOOLEY: I mean, I would assume that it would be the same date for everything. I mean, because the feds were moving to it, so this office had to move to it whether this bill passed or not.

MR. SLUNAKER: But I would say, treat this as more than just a ministerial thing and give as much notice to the business community as you can because then people will -- they will need to pay attention as you pointed out. It does have some implications for a few employers.

MS. MYERS: Okay.

The other pieces for this section are definitional. They're -- in Subsection (4)(b) of the amended statute, it talks about substantial continuity of ownership or management. And we aren't certain at this point exactly what we should consider a substantial continuity. The same board of directors? The essential same ownership? You know, the owners stay but they maybe reincorporate into a different name. What exactly was intended with substantial continuity?

MR. SEXTON: Well, you know, I'm not sure what ESD has done in the past there, but wouldn't we want to use

the same or similar standard that L & I and Revenue use?

MS. MYERS: I don't know. I'm not familiar with their standards.

MR. SEXTON: Well, as -- well, let me ask the question, then we can -- is there a standard that Employment Security has used in the past?

MS. MYERS: Keith?

MR. BLACK: As far as the standard goes, we haven't

-- this is a whole new section. So it's not something that we ever had to deal with before.

MR. SEXTON: Successorship has never been dealt with

before?

MS. MYERS: We had successorship, but this legislation is attempting to fix problems with the predecessor-successor statute as perceived by the business community and so on. As far as the individual -- right now when we have a new business being set up, this business can acquire a business that's closed that has a low tax rate and uses that low tax rate to establish their new -- for their new business. So they are -- although they're a brand new business because they've acquired a small business or a business with a low tax rate, they qualify for the low tax rate. And -- for a minimum of two tax years. And I don't think that was ever the intent. There is a different section for people who have -- let me back up -- new businesses that have a particular tax rate. But this way they can avoid that tax rate for new

businesses by acquiring a small business with a low tax rate.

MR. DOOLEY: The explanation that you just gave, Juanita, I think there was a more important consequence that was happening that was trying to be closed here which was the business who hit "five four" said, "My rates are

way too high. I'm better off if I go out of business, come back into business as a new business. I got all the same people, got the same owners, got the same business. I call it something different, and I'm now at a new employer rate," which is industry average. And under the

new proposal, it would be industry average plus 15, but it's still not I guess a disincentive enough not to go out of business and come back in. So I mean, the best term that people used was "sue dumping." You know, people just dumped and then came back into business. So I don't know how many people actually purchase a smaller business or a business with a lower rate to move to the lower rate. There are people who purchase and are concerned about -- there's another section in here that's concerned about if I'm an employer that's very large and I acquire a small company that has a very high ratio, that you take the larger employer's rate when they combine. But in terms of the successor-predecessor thing I think the main goal is to try to impact the folks that are going into business coming back into business as a successor that are basically the same owners and the same -- all that stuff.

The only thing that I would -- I'm not going to get

into what the definition of substantial continuity of ownership or management is because we didn't choose to do that either.

MS. MYERS: Thank you.

MR. DOOLEY: Yeah. But I would caution the folks who have to deal with that definition stuff in rule that the legislature had the opportunity in another amending proposal to accept a version or a definition of successor -- or of substantial continuity or ownership and management. That was rejected. So as far as legislative history is concerned, I would take a look at that and try

not to be like that.

MS. MYERS: Do you know where I could find that? Because most of this isn't on the --

MR. DOOLEY: It was an amendment on the floor.

MS. MYERS: It was on the floor, okay.

MR. DOOLEY: I think it was the Keiser amendment in the Senate, and there was an amendment in the House to do the same thing.

MR. RAFFAELL: This is an area that the Department of Labor is looking at at the federal level. They're looking at even amending the Social Security Act. Congressman Burger (phonetic) from California has proposed some -- is proposing some legislation. And Ray Gonzales and I were at a one-hour teleconference with some people in D.C. on this, and primarily whatever definition you have it should deal with what are we trying to accomplish?

25 And what we're trying to accomplish here is avoiding

1 just what Tom was talking about is an employer that's in
2 existence establishes a subsidiary or another company. If
3 it's a subsidiary, you would flag it for your fraud
4 people. And may even put the same address that they have
5 for Company A, and then after about two months or so they
6 start transferring the payroll of those people to the
7 newer employer which was the mid-level rate, and the fraud
8 people that are watching this in some states are looking
9 for these payroll swings. And the problem you have is,
10 you know, when you have continuity of ownership you're

talking about corporate officers. Are they the same -- the key corporate officers? Or any of them for that matter? If it's a large corporation they may have 50 to 100 corporate officers. So it's your auditors that are going to be doing this, your tax people. I don't envy them because they're going to have to decipher some of this if we ever get some mandates from the federal government.

Right now I don't think that that bill's going to go through at least as proposed. But this is an area that is getting more and more widespread from employers that are abusing the system. And they just transfer all of them to the lower business, and even though they're still working for the same company, where do you draw the line? "Oh, we transferred that portion of the division to the new

company." And if the intent there is that if you do it for that purpose to lower the rate, the Burger bill is requiring that the condition of denying that would be that they did it for purpose of lowering their rate. Well, how are you going to prove that's why they did it? And so then you get into some real litigating issues. And there's no easy fix to it.

But there are states that have written into their transfer laws -- quite a few of them -- that address this issue. And some eloquently and some -- I think they're all trying to do the same thing. But I suggest you take a look at some of the other states' laws for getting that definition.

MS. MYERS: Okay.

MR. SLUNAKER: Juanita?

MS. MYERS: Yes.

MR. SLUNAKER: This whole churning issue is what we were trying to get at here where today it's the Me And Him Corporation and tomorrow it's the Him And Me Corporation. And to the extent that you try to come up with a laundry list of definitions, you know, there's more reams of paper that are going to continue to roll through. It might be beneficial for the Department to consider adopting a process in their regulations about what they're going to do to determine whether or not there is substantial

continuity.

And it was the clear intent from our perspective to place the burden on the business to be able to say, no, you know, it's the Norm And Me, not the Tom And Me, you know, Corporation. There is not substantial continuity. I mean, you could put some criteria in there about key decision makers and equity and things like that but, you know, the thing to do is to serve notice on the employers, the business people that are intentionally gaming the system that, you know, there will be some broad framework within which to operate, but they're going to be asked to explain why there isn't a substantial continuity. And I think there may be a chilling effect on that. We go into this with the full understanding that there's no easy fix for this thing, but we got to try to do something.

Now, having said all of that, there is a concern that we have in construction that we don't want to see affected. This is -- in construction, particularly with high volume, complicated long-term projects, they use a mechanism called "joint ventures" where two or three or more companies come together, create a separate company to build this project and then it goes away. It was not the intent to penalize those operations. We are comfortable with them being treated, you know, as a new business, and they might get that. But the general conversation was

that the Department has approaches that they use for joint

ventures right now that we and I anticipate this change would affect those.

So if there is some anticipation that there's something involved that we'd like to know as soon as possible so we can give you some input there.

MS. MYERS: I don't believe so.

Elena?

MS. PEREZ: No, I don't think that's something we're looking at.

MR. SEXTON: I think there was some good comments from over here.

What I said earlier about, you know, other examples out there, I know that the work group, the streamlining work group, between L & I and ESD and Revenue, was at about a year ago, one of the things they looked at -- and I think that L & I and/or Revenue, I think there's, you know, good examples out there about what works in other

places, and I really don't think that we need, you know, three different solutions or we need -- or that we need to recreate the wheel here.

I think I agree with the intent, and I think that, you know, we can find, you know, the working model out there at Revenue or L & I, I think, what they do.

MS. MYERS: Okay.

The other piece we were looking at is in (4)(c) where it talks about the successor simultaneously acquiring another business. And I think I messed up -- and I apologize to Keith -- that my previous example was more

surrounding the simultaneous acquisition rather than --

MR. BLACK: Right. The simultaneous acquisition I think would fit what Dan was saying about forming a -- bringing a group together to form a joint venture, and they would be taxed according to the way (4)(c) is written as -- at industry average.

MR. DOOLEY: Well, they would be a new business, though. On the joint venture?

MR. BLACK: Yes.

MR. DOOLEY: They would be a new business. They wouldn't be a successor or acquisition.

MR. BLACK: Yeah, unless they transferred assets.

MR. DOOLEY: Right. I mean, this would be Weyerhaeuser buying up McMillan (phonetic) or Atlantic. You've acquired a business that has two or more employees with different rates at the same time or near around the

same time. And I guess the question you have is: What's near around the same time, right?

MS. MYERS: What's "simultaneously"? We don't want to say that it's the same day, you know. The recommend -- what we are looking at is possibly saying that

simultaneous is all transfers that occur as a result of a reorganization that goes from the time of the reorganization starts to the time the primary entity is transferred. So basically it encompasses the entire transaction would be the simultaneous piece, you know, as they start doing this acquisition group.

MR. DOOLEY: But if -- I guess if you use the term "reorganization," I mean, what if I'm -- I'm just company XYZ and I decide to buy up ABC and STU or something in the same month. I'm not reorganizing; I'm just buying -- I'm buying companies.

MR. BLACK: Yeah, in the case like that, if you bought those companies, then there's really as far as for tax rate purposes there's no predecessor-successor relationship, only for wage-based purposes.

MR. SEXTON: You stay at your own rate?

MR. BLACK: The entity that bought the other two entities would continue at their rate, and then they would from that point forward they would add any, you know, additional experience that those acquisitions caused. So no historic experience.

MR. DOOLEY: So what would have to happen, though, is if I'm XYZ and I buy ABC and STU, then I'd have to -- in

order to be a successor company, then I would have to be ABC-STU as my new company. And I'm trying to figure out

now which rate to use.

MR. BLACK: Yes. Yeah, that's exactly right. You would have to --

MR. DOOLEY: So if I'm just an acquirer and they stay subsidiary companies, they keep their own rates. But if I suck them in and make them part of a bigger -- if I'm Boeing-McDonald Douglas and I become, you know, McBoeing, now I'm trying to figure out which one to use, right? I'm trying to figure out whether I use McDonald Douglas' or

Boeing's?

MR. BLACK: What you're looking at in a case like that I believe -- and Dale could probably address it better -- is that what you're doing is you could be keeping two separate entities. It's a matter of whether you've got two separate legal entities or you're combining those two separate entities into a single entity and you've got very different taxation depending upon whether you're combining them or whether you just own the company. If you own the company, then that company maintains the rates that it's had all along. There's no change there. But if you acquire -- you know, if you merged it in, then it would be a different story.

MR. RAFFAELL: My understanding of this is that if you buy two companies and you're going to form a third company and you combine those for the current rate year,

you're going to use the rate of the highest taxable wage base company to -- for the remainder of that year. Is that right?

MR. BLACK: Under the current law, yes, that is the case. Under the law -- the new (4)(c) section as written, you'll get the higher rate of the two, but no less than the industry average for that classification. So it used to be no less than one percent. Now it's no less than the industry average under the new law.

MR. RAFFAELL: And that seems fair. And then the following year you combine both of their experience

together to determine their experiencing rating?

MR. BLACK: No. You would continue the industry average until they've met the qualifications in order to be a qualified employer on their own right which is generally two full years of employment.

MR. RAFFAELL: It sure makes it easier for you guys to do it that way. A lot of states will do it the other way; they'll combine the two.

But the first year in Texas, for example, was -- my concern when this was done was that we didn't have a Texas style situation. We actually bought a garden supply business down there -- four or five of them and merged them into one business. And they -- the way the law read was the one with the highest rate would be the rate that's

assigned to the new business. And the one with the highest rate had like two employees or three, five, six. And the other ones had 50, 60, 70 employees. We still got stuck with that higher rate. And I always felt that what they should have done was to merge all of the experience and come up with a rate, and that would be the ideal way of doing it.

The way you're doing it is probably adequate. I'm not going to argue with that. That's probably good. And the law says to do it that way. That was the intent.

MS. RADER-KONOFALSKI: It doesn't say anything about the experience.

MR. DOOLEY: No, it's the largest taxable payroll now.

MR. RAFFAELL: Yeah, we're not using it.

MS. MYERS: We need to move on. It's 3:15.

MS. PEREZ: And we just have the good parts ahead of us.

MS. MYERS: Yes, the good parts are ahead of us.

Section 21, benefit charging. We're going to look down at Section (2)(c) of Section 21.

It provides that when an individual's separating employer is a covered contribution-paying base-year employer, then the charges for the experience rating will go only to that employer. If the individual quit

basically because they took a new job, quit for a bona fide offer of work, or one of the deteriorating work site conditions, the safety, distance, illegal activities, those types of pieces. We had some questions that came up when we looked at this.

First off, we've never used the term "separating employer" before. So that's a new term. We've used "last employer" which was defined in a court case for us, which is essentially the last employer they worked for and any employers from whom they have a potential disqualifying separation.

An example I give here in this note is they quit a job four weeks ago and then went to work for another employer and then lost their job, quit or whatever. We would -- we adjudicate that one because it hasn't been seven weeks and they couldn't -- and they haven't earned

seven times their weekly benefit amount. So that's also one of their last employers now. Do we use that same definition for the purposes of this section?

MR. DOOLEY: I think the intent especially with the voluntary quits piece which is where the charging kind of comes into play more often than not was that the employer who caused the quit was going to be the employer who was charged for all benefits. So it would no longer be a proportionality issue; it would be -- you know, if I was

-- if I'm an employer and I was creating a hostile workplace and somebody quit on me, the employer community

was like why should all the other employers pay for the deal of the one? And so while "separating employer" is a new term, it's not last employer. It is the employer who caused the voluntary quit or the action that made the employer -- or the claimant leave the employment.

MS. MYERS: And I can see that for the pieces that relate to deterioration of working conditions. It's a little less clear when you've got somebody who quits for a new job. Somebody who works for two part-time employers and quits them both because they found one full-time job, that's not an uncommon scenario. So both those employers under here qualify for the -- to have the charges assessed against them.

So our question is: In what proportions do we do that? Do we do it based on their percentage of the base-year earnings or 50/50 because there's two of them? How would we do it?

MR. DOOLEY: Before -- I mean, correct me if I'm wrong because I don't know if I really get this part of it. But before if I left to get a new job, and let's say I use your example. I have two employers -- two part-time employers. I go to full-time work. And I quit my job to go to the full-time work, and the full-time work never

materializes. I never actually go to work for that individual. Then I would have been qualified under the voluntary quit to accept another job. Bona fide offer never materialized. You would have proportionally charged --

MS. MYERS: Everybody.

MR. DOOLEY: -- everyone in the base year, right?

MS. MYERS: Yes.

MR. DOOLEY: So what we were trying to say is that all stays the same. But if I go and accept a new job, and I go to work for that next employer, and then that employer lays me off, that's a separating employer that should be charged the entire base of the charging of that individual because they're the ones who caused that separation. The other two would not.

MS. MYERS: Even for a layoff? Because it doesn't say that. If that's -- if they quit two jobs and went to work for another employer who then laid them off, so then you're saying we should still do proportionate for everybody?

MR. DOOLEY: No. It should be charged to the

separating employer. That was the intent.

MS. MYERS: But they may not be a base-year employer.

MR. DOOLEY: Then they would be a noncharging -- I mean, it would be an ineffective charge.

MR. SLUNAKER: The purpose was to say that those costs shouldn't be socialized amongst the employers who had no part in the person drawing benefits. You know? So if the employer laid that worker off, regardless of how he or she came to him, that employer was going to be stuck with the cost. All of the costs would be charged back to that business.

MR. DOOLEY: The only changing in charging from what I can remember are the pieces with regard to voluntary quits. Right?

MS. MYERS: I think so, yes.

MR. DOOLEY: Okay. So all the voluntary quits are fairly easy other than what you're talking about here. I mean, if I have a military transfer --

MS. MYERS: Well, that's not one of the listed ones anyways.

MR. DOOLEY: Right. I mean, what we were talking about was the deterioration, the hours, --

MS. MYERS: Right.

MR. DOOLEY: -- all that stuff. So most of those are fairly easy to determine who that separating employer was. Who caused -- you know, if I made this person drive 200 miles to work back and forth, then I'm the separating employer, and I should be responsible for that person's

25 charges that they gain.

1 And the only reason that I'm -- I guess I'm concerned
2 about the leave-just-to-get-a-new-job thing is -- and I
3 don't mean to make this a political thing, but that was
4 one area the Speaker specifically wanted to change because
5 he had been hit by that, in that, you know, the person
6 went to get another job, and the next guy up the chain
7 laid that person off, and he got charged for it. And he
8 didn't think that was fair, and he wanted that changed.
9 So that's particularly why this charging change occurred
10 is they wanted the next employer that caused -- you know,

"I could have kept this guy employed" is what was being said. You know, "This guy left me to go take another job. They started working for this other employer. The other employer let him go." And under normal circumstance, everybody would have been charged, you know, proportionally. And the goal of that particular point here was it's that person's respons -- it's that last employer, that separating employer's responsibility to be charged for all those benefits.

MR. SLUNAKER: And the underlying principle was to end the socialization of those costs.

MS. PEREZ: I was just going to say that he could have requested relief of charges. It would not have been charged to his account. But if the point --

MR. SLUNAKER: And it would have been spread over

everybody else. And that's what everybody else was objecting to.

MS. MYERS: Now, my concern is -- and maybe I'm misunderstanding you. But what I hear you saying is if you quit for another job, and then your new employer lays you off, that new layoff employer should get 100 percent of the charges?

MR. SLUNAKER: Right.

MR. DOOLEY: That's right.

MS. MYERS: But it doesn't say that. It says in here that benefits shall be charged to the experience rating account of only the individual's separating employer if

the individual qualifies under this quit to fall -- the quit for a new job and then deteriorating working conditions. It doesn't say anything about charging them to the laying-off employer.

MR. DOOLEY: Okay, where are we?

MS. MYERS: On Section 21, Subsection (2)(c).

MS. PEREZ: The bottom of page 30.

MS. MYERS: Bottom of page 30. It says they charge to the person who --

MR. DOOLEY: Only if the individual's separating employer -- if the individual qualifies for benefits under -- that number 1 is the quit to follow -- or quit to get a new job. Okay?

So you did two things. One, I've quit voluntary to accept another job. This requires me to become unemployed after having worked and earned wages in the next job. So separate that out for a second and say -- let's say I separated and then I didn't work and I didn't earn wages from that employer. Business as usual. Everybody gets charged proportionally, and that's the way it goes. But if I've gone to work for the next employer, I've earned wages from that employer, that separating employer is charged 100 percent for the dislocation. For whatever reason. Whether it's layoff. Whether it's because of domestic violence. Whether it's because of some other cause.

MS. MYERS: Okay. I think we're going to have to go back and look at that piece. That's not how we were

reading it. We'll look at it.

MR. DOOLEY: This is the little Speaker's thing. He wanted it.

MS. MYERS: The other thing we did want to point out is -- well, it wouldn't happen if your interpretation is correct, but if somebody quits a job and one was a taxable employer and one's a reimbursable employer, we only charge -- the statute says you charge all benefits to the contribution-paying employer. So the way this is worded if our interpretation originally was correct -- and we'll

have to go look at this -- it would all go to taxable, and

reimbursable would get a pass.

Now, we have questions about that because we've --

MR. SLUNAKER: That wasn't the intent.

MS. MYERS: -- never done relief of charges for reimbursable employers before. And that is essentially what would occur. So we'll go back and take another look at this whole section. And we'll see what the people at the meeting on September 4th say.

And we'll try to find anything -- did the Speaker put his comments on the record?

MR. DOOLEY: (Shaking negatively.)

MS. MYERS: Okay. Well, we can possibly contact staffers and see exactly what the intent was.

MR. DOOLEY: I think they'd be able to enlighten you on a lot of this stuff in terms of the 26-week thing and this.

MS. RADER-KONOFALSKI: Just another question on this one. It could really confuse things even further.

If you've got simultaneous employers, let's say simultaneous employers and both of them let somebody go, you know, like in the case of part-time instructors, so each of the colleges has their own little -- they consider themselves separate employers. So is that already covered under that law that was passed a few years ago?

MS. MYERS: Well, they're already covered because those would both be reimbursable employers, and this new change only applies to the contribution thing. So if

somebody left -- you know, worked for two community colleges part time and then got a full-time position at another community college, so they quit those two, they had good cause for quitting, and they can't get relief of charges because they're reimbursable, but the charges would be split out proportionally between the two of them is what we would bill the two reimbursable employers for. That hasn't changed.

MS. RADER-KONOFALSKI: Okay.

MR. RAFFAELL: And you do that based on their liability that's based on their earnings of each employer? In other words, if one employer paid 70 percent, then they get stuck with 70 percent of benefits that are drawn, and the other guy gets hit with the 30 percent.

MS. MYERS: Correct.

MR. RAFFAELL: I can see where you're going to have some fun with this from a tax standpoint.

MS. MYERS: Okay. And the final bullet we had there, again, is an example when they have two simultaneous jobs, one lays them off, one quits with good cause, it looks like the charges all go to the person from whom the employer quit, not the laying-off employer.

MR. SLUNAKER: This is like two part-time jobs you mean?

MS. MYERS: Uh-huh, yeah. I mean, we have a lot of people out there who work part-time jobs, two or more.

MR. DOOLEY: Well, the charging question is on the good cause quits, right? So the charges from the employer

with the good cause quits would go to the employer who caused the quit. The charges for the laid-off employer would be prorationally done to all base-year employers, right? Or just to the laying-off employer?

MS. MYERS: It wouldn't go to the lay -- what it says here is it's paid -- all benefits shall be charged to the experience-rating account of only the individual separating employer who -- when they quit for good cause. So they quit -- so it looks to us that all the charges would go to that employer from whom they had the quit.

MR. RAFFAELL: What we're talking about here in most cases like that, if you quit from one employer or two employers and their tax bank, they can get relief of charges. They're relieved of charges. That's a quit not attributable. I think what we're saying here -- that Tom's saying is that then you have some socialized costs

that are going to be charged to the fund. And they don't get charged to any employer's account.

My impression from what you're saying is those

socialized costs then would go to this employer that lays the person off. At least that's the way I'm reading that section you read. To the separating employer. That's the separating employer that caused that person now to be drawing that.

MR. DOOLEY: I think the thing that you have a point about, Juanita, is I'm not sure the way that this language is in terms of -- it all depends on what benefits we're

talking about. I mean, the Department is reading it as all benefits. And I think what we're talking about or what the intent was is all benefits attributable to the employer who causes the action. I mean, that's the clarification. I mean, what we were talking about is the charging of the benefits to a person who leaves, gets another job, works for them for a while, quits or gets laid off are charged to the separating employer.

But in a separate situation where you got one laid off and one quit, I think the intent was charge all the quit stuff to the quit employer and do what you'd normally do on all the other benefits.

MS. MYERS: Okay. We'll go back and look at it.

Okay, Section 22. And it's the last one I had comments or we had questions on internally. Employer penalties.

You have handouts in your packet that say Section 22

in the corner. The first one, of course, is the current penalty rule which is set at $10 which is what the original statute was. The new statute says that it can be up to $250 or ten percent of their quarterly contributions for each offense, whichever is less. And, of course, that's a significant change, and we -- because of the higher penalty, although it's been in statute before, we haven't defined it. We want to look at defining what we mean by "timely," what we mean by "complete."

For example, if the employer where it happens they don't list the Social Security numbers of the people -- of

their wage earners or they don't report their hours and so on. And we are also possibly looking at a range of penalties. I mean, obviously if they do something, you know, something minimal, the penalty would be lesser than if they had a major failure -- you know, a significant failure to report that caused real problems for us. And also looking at ranges of penalties for continued offenses. The second time, you know, third time, fourth time? At what point do we get up to the maximum? Our intent was certainly not to hit everybody the first time around with a $250 penalty fee. We see this as a range of penalties.

I do want to emphasize because one, it's the statute, and second, it's our practice is that we will do an

education effort with employers first.

We are planning on doing a technical assistance program to let employers know about the new penalties, what we would consider a timely and a complete report, and then -- and work with them each time. I mean, work with them before we start assessing any penalties to let them know that this is -- the report that you sent in is inadequate because -- and fix it or next time it happens -- then they would know, and then we start looking at penalties. But technical assistance first.

And so we're looking at what type of penalty to assign to which or how many violations. At what point do we get up to the $250 or ten percent and whether they need

to increase. And we haven't had a lot of discussion yet about at what point we're going to start triggering the increases. Do we -- because as I said, we've got -- we've had a $10 penalty in place for years and years and years. And we rarely charge that anyway. But --

MS. PEREZ: It does get charged, but we do consider waiver with extenuating circumstances.

MR. SLUNAKER: When it's really financially applicable.

MS. MYERS: Pardon?

MR. SLUNAKER: When it's financially applicable to pay.

I have a response on -- we very much feel -- certain of us from the business side, and I suspect you will find some variance in the degree of the emotion held here, feel that what's sauce for the goose is sauce for the gander.

We are asking for greater accountability in the system from claimants, from employers and from the agency. And to the extent that you feel you need to adopt rules to fully implement that, the Associated General Contractors and I think most of the rest of the business community is okay. They just need to be clear, and we need to know what, you know, what's going to be expected.

I'm not sure any of those things, particularly some of the things that you mentioned like Social Security numbers are trivial. I mean, when you're looking to that as a cross match for a whole bunch of other stuff, that's one way that employers who want to game the system and

throw sand into the gears by just not providing or, you know, flipping one digit around in a Social Security number.

And, you know, fool me once, shame on you. Fool me twice, shame on me. I mean, you've got to try to have a scheme here that says, you know, "Okay, we're going to allow for some misunderstanding or misinterpretation, but, you know, after that you're going to have to show to us that you didn't mean to cheat." And I have no problem

using those terms.

MS. MYERS: For example, we have some employers who

won't report hours. They simply won't.

MR. SLUNAKER: Well, you have a greater incentive to convince them that it's worth their time.

MR. SEXTON: Get a bigger stick.

MS. MYERS: Okay. The other piece, the very last page on the handout, it says Section 22.

The next section of this, (1)(b), talks about an employer who knowingly misrepresents the amount of their payroll. There's no definition there.

What I've attached for you is the definition we use for claimant fraud. And we would like to use this as a starting point or a -- or it may need to be tweaked because some of the stuff we're looking at is payroll as opposed to other pieces. We may need to add some language or modify it somewhat, but we would like to use essentially the same type of standard as far as they gave

us the information, it was material to their taxes or tax rate, they knew it was false and -- or they failed -- well, there wouldn't be very many failed to determine unless somebody said, "I didn't check the payroll."

MR. SLUNAKER: Well, actually that is one area that you've got to be careful. I'm not interested in a scheme that allows an employer to hide behind a third-party

administrator and say, "You know what? That wasn't me. That was them. They screwed up." Baloney. They are agents of the employer. The employer's employees are agents of the employer. And we ought to be taking the

position that these reports come from the employer. Whoever is the big cheese has the responsibility, and they can't -- you know, we shouldn't have a system that allows the business to get off -- get around that responsibility by saying, you know, "It was the bookkeeper's fault" or "it was the insurance company." You know, that's just not going to cut it.

MS. MYERS: Okay.

MR. DOOLEY: I'm going to go through a couple of bullets because I think you've asked a lot of questions and I've got a whole lot of answers.

I think as AWB we would fully support the rule making with regard to the range of penalties. I mean, I think you all have a good enough handle on what's going on and who does what to institute, you know, what "timely" and "complete" means and, you know, putting different penalties in for being 30 days late versus 60 versus 90,

you know, I think is a very reasonable thing to do.

You know, failure to file the differential thing and others, and we'll wait and see what all gets put in there.

The only add I would recommend you looking at from a

knowingly misrepresents piece in terms of Subsection (2), I know that staff took that directly from the workers' compensation penalty statute. It's almost identical. And going back to Dan's point about being uniform, I mean, to the extent that you can mirror whatever L & I does with regard to this penalty is probably going to be welcomed by the employer community so that it's, you know, woven in

together. But I know that that's where the staff took it from.

MS. MYERS: Okay. And then, of course, the Department has the authority under this new amendment to charge employers for reasonable audit expenses. And we'll just -- we plan to list out what factors we'll look at in calculating reasonable audit expenses in the event it becomes a problem.

MR. DOOLEY: You'll still have a full-fledged waiver section? I noticed in the pieces you had in here there's a fairly detailed good cause list of things that would allow for waiver. Are you going to review that and update that?

MS. MYERS: Yes. All the WAC's in here that are included in this packet are those we need to look at for amending. So I'm not going to say we're going to get rid

of waivers, but we will look at the entire rule again as we take everybody's comments in and compare it to the new

statute and see what changes need to occur.

MR. DOOLEY: It's a fairly broad waiver section, so I'm assuming that the Department has a lot of leeway into what they consider good cause. Having a list is a very helpful thing for the business community to know what those are.

MR. RAFFAELL: I think that's what I was thinking of is it would be nice to put something in there that would protect you and the employer. You're doing examples here

of reasons that you're going to give a waiver. And you may want to put a phrase in there at the front of that that says "may find for good cause, waive penalties such as in the following situations." The way this reads, it just says, "Here's the only thing that we're going to do to waive penalties."

MR. SLUNAKER: I just have a question on your expense issue with respect to the audits. My understanding is you don't charge when you send employer auditors out to do that now. And I don't believe Labor and Industries does either.

MS. MYERS: Correct.

MS. SLUNAKER: So the question is: Are you anticipating just trying to figure out what the normal costs for an audit would be? Or is this going to be something that -- because this is targeted at potentially

a little bit more difficult case.

MS. MYERS: Right. And I think what we're -- correct me if I'm wrong, Richard -- but I think what we're looking at is when we have to do something extra. We believe the employer has falsified their records, so we're going to go out and we start looking, taking the time to go out and look at all their records, and we find, in fact, that yes, they were falsifying their records. Then we're looking at is charging them --

MR. DOOLEY: Won't you just account for that?

MS. MYERS: Pardon?

MR. DOOLEY: Won't you just account for that special

time and then just charge it out?

MS. MYERS: Yes. But it could also include travel expenses. I mean, there could be a variety of different things, particularly if it goes through the appellate process.

MR. RAFFAELL: I've talked to Department of Labor about situations like this. And there are some state agencies in the south that I know the Department of Labor is talking to them to where they're starting to charge for their services. And they're charging for the tax rate notice if you never got it in the mail. If you never got your benefit charge statements, they charge you $25 or $30, whatever. And I've talked with the Department of

Labor about this issue, and then you're getting into some areas -- and you have to be very careful in this area -- that when you start charging employers for services that the Department of Labor in theory is supposed to be paying you already with federal funds. And you want to keep that in mind.

MS. MYERS: And that's why we weren't talking about the normal audit pieces. Richard Harris here is --

MR. RAFFAELL: This would be where it's fought.

MS. MYERS: Richard is in charge of the auditing.

But what we're talking about is in those cases the fraud where to prove it, it usually takes a lot more work to go out there and start reviewing all their payroll hours and looking at their books and so on.

Okay, we really appreciate your input. We're not going to start writing the rules until after the meeting on September 4th when we have an opportunity to get input from those individuals who are attending that meeting. I anticipate it's going be a larger meeting because there were more people who said they could come in September than could come now. But -- and it is going to be the same. And we'll just take comments from the additional group.

After that, Susan and I are going to sit down and start writing the rules, looking at the rules that we

currently have, making amendments to those. And we will consider any testimony that comes in in writing, certainly. But we will at that point come up with some draft rules that we'll come back out and give you the opportunity to comment on. And we will keep you apprised of what we are doing. But we're on a pretty fast track. We'd like to have at least the text of the rules flushed out by the later -- the end of October or early November if we can because we've got to train staff before January 4th, so we need to give them some idea. The rules may not have completely gone through the entire rule-making process, but if at least we have something in draft we could adopt emergency rules to take us over while we're penning the final. It normally takes a minimum of eight months or so to adopt rules. And we didn't have that amount of time. But this is our primary focus for the next few months is working on these rules to get up to

speed.

MR. DOOLEY: Will you be talking about some of these issues that we brought up today, will you be talking to legislative staff and legislative folks about --

MS. MYERS: If not me, somebody will. Yes, probably.

And we already had one meeting with legislative staff.

MR. SLUNAKER: Do you have -- have you considered the

idea of sharing maybe an outline of where these rules are headed before you get them into the draft stage so we can provide either through a meeting like this or informal

comment, you know, "You forgot about this" or "What the heck is this all about" or "Why are you doing that?" I mean, I understand that it could potentially slow the process, but I'm not suggesting you to wait. But I think if you just -- you know, as your thoughts come together about what the essential elements should be, answers to many of the questions that you have here and the 15,000 others that will pop up that you haven't thought of yet, you know, I just think that might be a little bit beneficial to the process.

MS. MYERS: I think we could do that. Because it takes long to actually piece out what the rule is going say and put it into language that is easy to understand, particularly for some of these complicated issues. But I don't see any problem with doing that.

Everybody please make sure you -- if you haven't that

you are signed in. Because for that piece, we'll probably send it to the people who were in attendance at the two meetings. Because otherwise, it would be confusing I think.

Is there any further questions?

MS. METCALF: Does everybody have Juanita's e-mail?

If you're driving home tonight and you think, oh gosh, I forgot to say whatever, that you can get it to her so that she can get on the record and be a part of this process.

MS. MYERS: You probably have it since I e-mailed you. But --

MS. METCALF: Or her phone works too.

MS. MYERS: Thank you very much. Thank you to staff for helping out.

(Whereupon, at 3:50 p.m., proceedings adjourned.)

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